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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1995

JASON RICHARDS and FANNIE HILL,
Petitioners,

vs.

JEFFERSON COUNTY, ALABAMA
and BIRMINGHAM-JEFFERSON CIVIC
CENTER AUTHORITY,
Respondents.

On Writ Of Certiorari To The Supreme Court Of Alabama

APPENDIX TO BRIEF OF RESPONDENTS

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CODE OF ALABAMA 1975

TITLE 40
REVENUE AND TAXATION

CHAPTER 12
LICENSES

ARTICLE 1
GENERAL PROVISIONS

§ 40-12-1. Change of place of business.

When a person has obtained a license to engage in or carry on any business, employment, or profession at any definite place in a county or city in Alabama and desires to remove to any other place within the same county or city where the license was granted and wishes his license altered accordingly, the probate judge who originally issued such license shall make such alteration, which alteration shall be shown on the license records of the probate judge's office; provided, that no license shall be altered to change a place of business to a location requiring a higher license than originally paid. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 830.)

§ 40-12-2. Issuance; form of license; levy of county tax; actions for recovery of tax.

(a) Before any person, firm or corporation shall engage in or carry on any business or do any act for which a license bylaw is required, he, they or it, except as otherwise provided, shall pay to the judge of probate of the county in which it is proposed to engage in or carry on such business or do such act, or to the commissioner of licenses or the State Department of Revenue, as specified, the amount required for such license and shall comply with all the other requirements of this title.

(b) Upon the payment of the amount required for said license and a fee of $1 herein provided for the issuance of such license and all costs and fees and penalties which shall have accrued, or for which such person, firm or corporation shall have become liable in any proceedings commenced for the collection of such license, or to enforce payment thereof, such probate judge, commissioner of licenses or Department of Revenue shall issue the license properly countersigned, in the form and on the blank to be furnished by the comptroller, which shall set forth and specify the name of the person, firm or corporation applying therefor, whether the business, profession or occupation for which the license is procured is owned by an individual, partnership, corporation or other association, stating the name of the individual, the name of each of the partners if a partnership, the exact name of the corporation or association, if a corporation or association, and the name of each of the principal officers thereof, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same, if such location shall be in a city or town and have a street number and, if not, then the location and amount paid for such license, and the time for which it is issued; and if the license is for a peddler it shall state whether he proposes to travel on foot or on horseback or on wagon or motor vehicle; provided, that the governing body of any county may furnish application blanks in such form that the applicant for a license may supply the above information in writing; and such license shall not be transferable except as otherwise provided herein, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein.

(c) Whenever a license is levied in this title, there shall be collected both a state and county license for each

place of business, except as specifically otherwise provided.

(d) In case it should become necessary to remove any business for which a license is required by this section from one location to another location in the same county, and such business is continued as the same kind and character and by the same person or firm as that carried on at the former location, another license shall not be required for such business for the same license year.

(e) There is hereby levied for the use and benefit of and to be paid to the county in which the license is issued, in addition to all license taxes levied under the provisions of Article 2 of this chapter, for state purposes and which are payable to the judge of probate or commissioner of licenses, a sum equal to 50 percent of the amount levied for state purposes, except as otherwise specifically provided.

(f) Any action to recover the amount due for any license, whether levied solely for state purposes or for state and county purposes, shall be instituted by the State of Alabama and may include all penalties and fees due by any person, in addition to the amount due for such license and interest thereon. The amount recovered in any such actions shall be paid to the State Department of Revenue, and if any portion of said license was levied for county purposes, such portion shall be remitted to the county in which such license was payable, and the department may from the amount of any penalties or fee thus recovered remit the amount, if any, due to the judge of probate, commissioner of licenses or license inspector. (Acts 1935, No. 194, p. 256; Acts 1939, No. 18, p. 16; Code 1940, T. 51, § 831; Acts 1943, No. 546, p. 535; Acts 1951, No. 700, p. 1208; Acts 1984, No. 84-446, p. 1040, § 7.)

§ 40-12-3. Collection and distribution where both state and county license tax levied.

Whenever, by virtue of the provisions of subsection (d) of Section 40-12-2, or the provisions of Article 2 of this chapter, both a state and county license tax are levied, the authority charged with the duty of collecting such license tax shall continue to collect the same, and of the total amount collected for such state and county license tax he shall distribute one half thereof to the state and one half thereof to the county, any other provision of law to the contrary notwithstanding. (Acts 1955, No. 572, p. 1248.)

* * *

§ 40-12-8. False affidavits or certificates.

Any person who shall knowingly make any false affidavit or certificate in connection with the ordering or procuring of a license to carry on any business or do anything in this state for which a license is required shall be guilty of a misdemeanor and, upon conviction, when the offense is not otherwise specifically provided for, shall be fined not less than $100 nor more than $1,000 and, at the discretion of the court, may be sentenced to hard labor for the county not to exceed six months as additional punishment. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 833.)

§ 40-12-9. Penalty for failure to take out license; selling throughout state under one license.

(a) It shall be unlawful for any person, firm or corporation to engage in or carry on any business, or do any act for which a license is required now or may hereafter be by law, without having first paid for and taken out a license therefor in the manner in this title provided. Any person who is convicted of failing to take out and pay for

the license required shall be fined not less than the amounts of all licenses required of him and, if convicted for refusing to take out the license shall, on conviction, be fined not less than the amount of the state and county license due by him and not more than $100 in addition thereto, and may be sentenced to hard labor for the county for not more than six months, all fines to be paid in money; and, when collected, two thirds shall be paid to the state and one third to the county.

(b) No person shall be allowed the privilege of selling throughout the state under one license except by special provisions of law. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 834.)

§ 40-12-10. License inspectors generally; when taxes due and payable; collection of delinquent taxes.

(a) The county commission of each county is hereby authorized and empowered to appoint a license inspector.

(b) It shall be the duty of the license inspector to scrutinize the records and stubs kept in the office of the probate judge and also to examine the license records of each city or town located in the county or counties of which he has been appointed license inspector; and, if it shall be reported to any license inspector or come to his knowledge that any person, persons, firms or corporations have failed or refused to take out a license for a business or occupation for which a license is required by the state or have failed or refused to take out a license for operating any motor vehicle or trailer for which a license is required by law, the license inspector shall thereupon cite such delinquent to appear before the license inspector at the courthouse of the county in which such citation is issued and to show cause why the license or privilege tax required by law has not been paid and, at

the same time, shall file with the probate judge of the county a copy of such citation showing service on the delinquent.

(c) If the license inspector shall discover any motor vehicle being operated without a proper or legal license, he shall cite the operator of the motor vehicle; and, in filing copy of such citation with the probate judge, he shall show on such citation the particular motor vehicle operated without legal license, as well as the operator thereof.

(d) The probate judge must in all cases, in addition to the other penalties required to be collected by him, collect the citation fee, if any, before issuing any license; and, in case of a motor vehicle where a license is taken out in the name of person not cited, the citation fee shall be collected if the citation filed shows the motor number of such vehicle. When any license is due the license inspector shall cause the delinquent to appear before the probate judge of the county and take out the same, but such probate judge shall not have the authority to determine the liability of such delinquent for such license and shall in each case issue a license to the applicant upon the payment by him of the amount or amounts prescribed by this title. If such delinquent shall fail or refuse to take out a license, the license inspector shall institute or cause to be instituted criminal proceedings against such delinquent before any court having jurisdiction of such offense. In case of emergency the license inspector must commence the criminal proceedings in the first place.

(e) All license taxes levied by this title, except as otherwise provided, shall be due and payable as of October 1 of each year and shall be delinquent November 1 thereafter. Where any license issuable by the probate judge or commissioner of licenses shall be delinquent, the same shall be subject to a penalty of 15 percent of the amount

of the license, which penalty must be collected by the probate judge or commissioner of licenses when the license is taken out together with interest at six percent from the date of delinquency; provided, that the penalty for delinquency in payment of motor vehicle licenses shall in no case be less than $1.50.

(f) It shall be unlawful for any probate judge or other officer to fail to collect such penalties when issuing such license.

(g) The probate judge, in remitting such penalties, shall file report with the county commission, comptroller and with the Department of Revenue showing the amount of such penalties collected, from whom, and for what collected, and he shall remit to the county general fund all penalties collected. The probate judge shall remit to the county general fund all citation fees collected where the citation was served by the license inspector or his deputy.

(h) If a criminal prosecution shall be commenced either by affidavit and warrant, or information or indictment, 44 percent of the fine or penalty thereafter imposed in the case shall be paid to the county general fund. The remainder shall be paid to the treasury of the state.

(i) The county commission may appoint deputy license inspectors, and the acts of such deputies shall be recognized as the acts of the license inspector.

(j) All citations to delinquents shall be served by any lawful officer or by the license inspector or his deputy for which a fee of $1.50 for each citation served shall be taxed against the delinquent.

(k) License inspectors shall have the same power to arrest persons violating the revenue laws of the state as is now vested in the sheriffs of the state and shall receive the same fees for such service.

(l) The Department of Revenue shall keep a record by counties in which, each month, shall be entered the number of licenses issued by the probate judge for each and every business or occupation for which a state license tax is required, and such record may be compared each month with the number of licenses issued by cities and towns for the same business or occupation.

(m) The license inspector shall be required to report to the Department of Revenue the reason for the failure to collect any licenses due the state which may be evidenced by the comparison of the report of the probate judge and the report made of licenses issued by cities or towns.

(n) It shall be the duty of the county commissions of the several counties to supply the license inspector with necessary citation blanks and other necessary forms to be paid for by the county.

(o) The county commission shall fix and pay the salary of the license inspector and his deputies and the expenses of his office.

(p) The provisions of this section shall not repeal, modify or prohibit any presently existing or future local act or general act of local application affecting the office of license inspector or which establishes any office or position which encompasses the duties of license inspector in any county. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 835; Acts 1951, No. 610, p. 1053; Acts 1990, No. 90-558, p. 948.)

§ 40-12-11. Bonds of license inspectors.

Before entering upon the duties of their office, all license inspectors shall execute to the State of Alabama a bond, to be approved by the Governor, in amounts to be fixed by the Department of Revenue, for the faithful performance of their duties. (Acts 1943, No. 122, p. 123; Acts 1961, Ex. Sess., No. 208, p. 2190.)

§ 40-12-12. License to designate place of business.

Every license granting authority to engage in or exercise any business, employment or profession, unless expressly authorized elsewhere or otherwise, shall designate the place of such business, employment or profession at some specified house or other definite place within the county of the probate judge granting it. Engaging in or exercising any such license, business, employment or profession elsewhere than at such house or definite place, unless expressly authorized elsewhere or otherwise by law, shall be held to be without license. A license which does not specify such house or definite place where business, employment or profession is limited thereto by law shall be void. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 836.)

§ 40-12-13. Engaging in several businesses.

Where any person, firm or corporation is engaged in more than one business which is made by the provisions of law subject to taxation, such incorporated company or person shall pay the tax provided by law on each branch of the business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 838.)

§ 40-12-14. Two or more licenses on same business.

Wherever in this title two or more licenses on the same business or occupation are required, it is hereby declared to be the intention of the legislature that all such licenses as are herein levied shall be collected without credit or offset, except where specific provision is made therefor. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 839.)

§ 40-12-15. License deemed a personal privilege; transferability.

(a) Every license shall be held to confer a personal privilege to transact the business, employment or profession which may be the subject of the license and shall not be exercised except by the person, firm or corporation licensed, unless specifically authorized by law to do so.

(b) When a business or privilege for which such license is issued is, under actual sale, transferred to a new ownership, a transfer of license may be effected by application to the probate judge originally issuing such license and the payment of a fee of $1. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 840; Acts 1984, No. 84-446, p. 1040, § 7.)

§ 40-12-16. Sworn statements of amount of capital, value of goods, stock, etc.

In all cases where the amount to be paid for a license depends upon the amount of capital invested, the value of the goods or stock, the amount of sales or receipts or any other fact or condition hereinbefore recited, it shall be the duty of the person applying for such license to render to the probate judge a sworn statement of the amount of the capital invested, of the value of the goods or stock or amount of sales or receipts, and to make under oath such further proof or affidavit as may be required by the probate judge to determine the character of the license and the amount to be paid for the same. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 841.)

§ 40-12-17. Population of municipality as determining tax.

Whenever this title fixes a license for a business or occupation which is located without the corporate limits of an incorporated municipality but within a fixed distance of such municipality and fixes the amount of the license by the population of such municipality, in the event there is more than one municipality within such distance of the location of such business, then the amount of the license shall be that which is provided for by the nearest municipality. (Acts 1935, No. 194, p. 256; Acts 1936, Ex. Sess., No. 124, p. 82; Code 1940, T. 51, § 842.)

§ 40-12-18. Penalty on agents of persons, firms, etc., who have not paid tax.

Any person who acts as agent for any person, firm or corporation liable for the payment of a license or privilege tax, without said license or privilege tax having been paid, shall on conviction be fined in a sum equal to the state and county license, and not more than $100 in addition thereto, and may also be sentenced to hard labor for the county for not more than six months. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 843.)

§ 40-12-19. Duty of Department of Finance to prepare forms of licenses.

It shall be the duty of the Department of Finance to prepare and have printed suitable forms of licenses and as often as need be to furnish to the several probate judges blank licenses signed by the director sufficient for the probable wants of their respective counties, taking their receipts for the same. Each such blank shall have a stub attached thereto, on which shall be printed such matter as the Department of Finance may prescribe, with appropriate blank spaces to be filled in by the probate judge upon the issuance of any license. The Department of Finance shall take and file in the director's office a proper receipt from the probate judge for the blank licenses furnished him. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 844.)

§ 40-12-20. License and stub must correspond.

Upon the issuance of any license the probate judge must, before detaching the license from the stub, fill up the blank spaces in the stub to correspond in all respects with the license as issued and sign his name thereto. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 845.)

§ 40-12-21. Records to be kept by probate judge.

The probate judge shall keep in a book prepared for that purpose an accurate account of all licenses received by him from the Department of Finance, and of the disposition made of them, and of all money received from the licenses issued by him, and make report thereof to the Department of Finance within 10 days after the expiration of the fiscal year, at which time he shall return to the Department of Finance all unused licenses and stubs, or account to the Department of Finance for all unused licenses, and shall also return to the Department of Finance the stubs of all licenses issued by him, and the probate judge shall on demand of the Department of Finance, at any time, exhibit to him or to any agent appointed by the Department of Finance for that purpose such license record and the original of all licenses then remaining in his hands and all stubs of licenses issued. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 846.)

§ 40-12-22. Disposition of moneys by probate judge.

Within 20 days after the end of each month, the probate judge must remit to the State Treasurer at the expense of the state all money received by him for licenses belonging to the state and pay to the county treasurer all the money received by him for licenses belonging to the county, and within the same time the probate judge shall forward to the comptroller and to the Department of Revenue each certified list of all licenses issued by him,

stating thereon for what business issued, amount collected for each license, from whom collected and the date of such collection; and, if no licenses have been issued, he shall report that fact; provided, that for the months of October, November and December of each calendar year, the probate judge shall be granted an additional period of 10 days in which to make the remittances and certification of lists above specified and for such months shall be required to make such remittances and certification of lists within 30 days after the end of each of such months. The probate judge shall be entitled to receive five percent of the amount of money collected for licenses due the state, which he may deduct from his remittance to the State Treasurer, and he shall be entitled to the same amount as compensation for collecting licenses due the county, which amount he may deduct from the payment made by him to the county treasurer, but he shall not be allowed any commission on any money not remitted by him within 20 days from the end of the month, except as otherwise provided herein with reference to the months of October, November and December of each calendar year, for which months the probate judge shall be entitled to the commissions herein provided if such remittances be made within 30 days after the end of each such months. If the probate judge fails to comply with the provisions of this section within five days after the date on which he is required to make such report and to remit the money collected by him, the comptroller shall forthwith report the fact to the Governor, who shall cite such probate judge to show why he has not made report of the lists of licenses and paid over the amount collected by him as required by law, and if such probate judge fails to show sufficient cause for such failure, the Governor shall direct the Attorney General to institute impeachment proceedings against him before the supreme court. (Acts 1935, No. 194, p. 256; Code

1940, T. 51, § 847; Acts 1951, No. 854, p. 1483; Acts 1977, No. 165, p. 224; Acts 1984, No. 84-446, p. 1040, § 7.)

§ 40-12-23. Applications for refunds; additional license.

(a) Any person who by a mistake of fact or law has paid to the probate judge or the commissioner of licenses money that was not due from him for a license or an amount in excess of that required by law for the business or occupation to be carried on by such person under the license shall be entitled to have refunded the money incorrectly paid, less the issuance fee and commission retained by the judge of probate or the commissioner of licenses.

(b) Any petition for refund pursuant to subsection (a) shall be filed directly with the department within the time allowed for refunds in Chapter 2A of this title, and thereafter shall be administered as provided for other refunds in Chapter 2A of this title.

(c) In case of the issuance of a license for less than the amount due therefor, upon the payment of the additional amount due for such license an additional license may be issued, in such manner as to allow credit for the amount previously paid by the licensee, and there shall be endorsed on the face of such additional license the words "Additional To License No. _____." (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 848; Acts 1943, No. 544, p. 533; Acts 1992, No. 92-186, § 23.)

§ 40-12-24. Department of Revenue to certify refund; State Comptroller and county commission to draw warrants payable to applicant.

If the petition for refund allowed by Section 40-12-23 is approved, in whole or in part, the department shall certify the amount which it approves to be refunded by the state and county. The State Comptroller shall draw a warrant payable to the applicant for the amount of the refund to be made by the state, and the county commission of the county in which such payment was made shall draw a warrant upon the county treasurer or county treasury payable to the applicant for the amount to be refunded by such county. Claims for refund hereunder shall not be subject to assignment, except assignments resulting by operation of law. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 849; Acts 1943, No. 544, p. 533; Acts 1992, No. 92-186, § 24.)

§ 40-12-25. License for part of year.

Unless otherwise provided, if any business licensed by this title shall commence after April 1 in any year, the amount of the license or privilege tax shall be one half of the year's license or privilege tax. In all other cases the license shall be taken out for the full term of one year, unless a shorter term is fixed by the provisions of this title. In all cases where the amount of license is rated according to the population of the town, city or county, the population of such town, city or county as fixed by the last preceding United States census shall govern. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 850.)

§ 40-12-26. Due and delinquent date; term of license.

Except as otherwise provided, all licenses or privilege licenses payable hereunder shall be due on October 1 of each year and shall be for one year, ending September 30 following, and shall be delinquent on November 1 of each year. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 851.)

§ 40-12-27. Each day's violation a separate offense.

If the law annexes a penalty for each or every violation of its provisions, or for each separate offense, it shall be

lawful to hold that each day's continuance in the exercise of any business, employment or profession, for which a license is required, constitutes a separate offense. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 837.)

§ 40-12-28. Disposition of proceeds of funds from licenses pertaining to timber or timber products.

All occupation license or privilege taxes imposed by the state for engaging in any business dealing with timber or timber products shall be paid into the conservation fund of the Department of Conservation and Natural Resources. (Acts 1935, No. 500, p. 1078; Code 1940, T. 51, § 911.)

§ 40-12-29. Additional penalty for failure to comply with Articles 8 and 9 of this chapter.

In addition to the criminal penalty provided by Sections 40-12-400 and 40-12-424, any person who willfully fails to comply with the provisions of Article 8 and Article 9 of this chapter shall for each such failure be subject to a penalty of not less than $500 nor more than $1,000. (Acts 1991, No. 91-321, p. 595, § 2.)

§ 40-12-30. Department of Revenue authorized to promulgate rules and regulations.

The Department of Revenue is hereby authorized to promulgate reasonable rules and regulations relating to the administration and enforcement of the provisions of this act and those other provisions of this chapter relating to the licensing of automobile and other motor vehicle dealers not in conflict with the specific provisions hereof. (Acts 1991, No. 91-321, p. 595, § 3.)

CODE OF ALABAMA 1975

TITLE 40
REVENUE AND TAXATION

CHAPTER 12
LICENSES

ARTICLE 2
BUSINESS, VOCATION OR OCCUPATION

§ 40-12-40. Who must procure state and county licenses.

Every person, firm, company, corporation or association, receiver or trustee, but not a governmental subdivision, engaged in any business, vocation, occupation, calling or profession herein enumerated or who shall exercise any privilege hereinafter described for which a license or privilege tax is required shall first procure a state license, and a county license when so required, and shall pay for the same or shall pay for the exercise of such privilege the amounts hereinafter provided, and comply with all other provisions of this title. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 450.)

§ 40-12-41. Abstract companies, etc.

Abstract companies and persons engaged in the business of furnishing abstracts of title shall pay the following license taxes: in towns or cities of 100,000 inhabitants or more, $75; in towns or cities of 50,000 inhabitants and less than 100,000 inhabitants, $50; in towns or cities of 20,000 inhabitants and less than 50,000 inhabitants, $40; in towns or cities of 10,000 inhabitants and less than 20,000 inhabitants, $25; in towns and cities of 5,000 inhabitants and less than 10,000 inhabitants, $20; and in all other places, whether incorporated or not, $10. The payment of the license tax required by this section shall au-

thorize the doing of business only in the town, city or county where paid; provided, that this section shall not apply to regular licensed practicing attorneys who furnish abstracts as a part of their general practice. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 451.)

§ 40-12-42. Acetylene gas and carbide manufacturers.

Each person manufacturing acetylene gas and carbide shall pay the following license tax: in towns of over 25,000 inhabitants or within five miles thereof, $50; all other places, whether incorporated or not, $25. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 452.)

§ 40-12-43. Actuaries, auditors and public accountants.

Each professional actuary, auditor or public accountant shall pay a license tax of $25 to the state, but no license tax shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person above named is engaged, each person so engaged shall pay a license tax of $25. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 453.)

§ 40-12-44. Adding machines, calculating machines, comptometers, etc.

Each person engaged in the business of selling adding machines, calculating machines, comptometers, billing machines, bookkeeping machines, cash registers, typewriters or similar machines shall pay the following annual privilege tax: in counties of over 100,000 inhabitants, $100; in counties of over 60,000 inhabitants and not over 100,000 inhabitants, $60; in counties of over 40,000 inhabitants and not over 60,000 inhabitants, $40; in counties of 40,000 inhabitants or less, $25. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 454.)

§ 40-12-45. Advertising.

All bill posting and advertising companies displaying advertisements in public places, including streetcars, and each person engaged in the business of advertising or bill posting shall pay the following license taxes: in counties having 200,000 inhabitants or over, $150; in counties of less than 200,000 inhabitants and as many as 100,000 inhabitants, $125; in counties of less than 100,000 inhabitants and as many as 75,000 inhabitants, $100; in counties of less than 75,000 inhabitants and as many as 50,000 inhabitants, $50; in counties of less than 50,000 inhabitants and as many as 30,000 inhabitants, $25; in counties of less than 30,000 inhabitants, $15. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 456.)

§ 40-12-46. Air-conditioning plants and equipment.

Each person engaged in the business of selling or installing air-conditioning plants or equipment which use or require the use of water connections shall pay, in the county in which is located his principal office, an annual state privilege tax of $100 and a county privilege tax of $50; provided, that in each other county in which such person engages in the business of selling or installing such air-conditioning plants or equipment, he shall pay a state license tax of $10 and a county license tax of $5; provided further, that no person subject to the provisions of this section shall be required to pay the license tax levied hereunder in any county other than where he maintains a regular and established place of business for the purpose of selling or installing such air-conditioning plants or equipment.

Any person other than those persons licensed under paragraph one hereof engaged in the business of selling or installing air-conditioning plants or equipment which do not use or require the use of water connections shall

pay an annual state privilege license tax for each place of business as follows: in cities of 100,000 inhabitants or more, $30; in cities of 50,000 and less than 100,000 inhabitants, $20; in cities of 10,000 and less than 50,000 inhabitants, $10; in places of less than 10,000 inhabitants, whether incorporated or not, $5.

As used in this section the term "air-conditioning" means the artificial lowering or raising of temperature or the supplying of fresh air by artificial methods.

Upon the payment of the license prescribed by Section 40-12-84, a contractor who installs air-conditioning plants or equipment shall not be required to pay the license prescribed by this section, nor shall any person who has paid the license prescribed by this section, who accepts contracts only for the installation of air-conditioning plants and equipment and no other type of construction work be required to pay the license prescribed by Section 40-12-84. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 457; Acts 1951, No. 582, p. 1017; Acts 1955, 2nd Ex. Sess., No. 71, p. 184.)

§ 40-12-47. Amusement parks.

Owners and operators of permanent amusement parks which shall be open for the public for not more than five months of each year may be exempted from payment of the license or privilege taxes on amusements or entertainments licensed by this title; provided, that they take out and pay for a license to operate a permanent amusement park at the following rates: in cities or towns of less than 5,000 inhabitants, or within five miles thereof, $25; in cities or towns of 5,000 inhabitants and less than 15,000 inhabitants, or within five miles thereof, $50; in cities of 15,000 and less than 25,000 inhabitants, or within five miles thereof, $100; in cities of 25,000 or more inhabitants, or within five miles thereof, $200. The provision of this title permitting the payment of a half-

year license after April 1 shall not apply to this section. No license shall be paid under this section by any town or city which itself owns and operates an amusement park. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 458.)

§ 40-12-48. Architects.

Each architect practicing his profession for the public shall pay to the state a license tax of $25, but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person above named is engaged, each person so engaged shall pay the amount provided above. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 459.)

§ 40-12-49. Attorneys.

(a) Each attorney engaged in the practice of law shall pay an annual license tax to the state, but none to the county. On October 1, 1992, the license tax shall be $200, and on October 1, 1993, and each year thereafter, the annual license tax shall be $250. If business is conducted as a firm or as a corporation in which more than one lawyer is engaged, each lawyer shall pay such license tax, but no lawyer shall be required to pay a license tax until the first day of October following admission to the bar. The license tax shall be paid to the Secretary of the Board of Bar Commissioners of the Alabama State Bar. The funds collected for the issuance of the license tax levied shall constitute a separate fund to be disbursed on the order of the Board of Commissioners of the Alabama State Bar. As soon after the first day of each November as practicable, the Secretary of the Alabama State Bar shall certify to the presiding judge of the circuit court having jurisdiction in the county the names of attorneys who have paid the license fee.

(b) The license taxes shall be due and payable on October 1 of each year and shall be delinquent on the following November 1. If a license is delinquent, the Secretary of the Board of Bar Commissioners of the Alabama State Bar shall assess and collect a penalty of 15 percent of the amount of the license. The penalty shall be paid when the license is issued.

(c) Section 40-12-10, relating to the collection and distribution of business license taxes shall not be applicable to license taxes provided in subsection (a). (Acts 1935, No. 194, p. 256; Acts 1939, No. 551, p. 871; Code 1940, T. 51, § 460; Acts 1951, No. 186, p. 437; Acts 1959, No. 156, p. 682; Acts 1966, Ex. Sess., No. 287, p. 430; Acts 1971, No. 958, p. 1716; Acts 1979, Ex. Sess., No. 79-27, p. 37; Acts 1985, 1st Ex. Sess., No. 85-119; Acts 1992, No. 92-600, p. 1246, § 1.)

§ 40-12-50. Auctioneers.

Auctioneers and apprentice auctioneers shall pay annual license taxes in accordance with Chapter 4 of Title 34.

§ 40-12-51. Automobile dealers.

Each person dealing in, selling or purchasing for resale automobiles, trucks or other self-propelled vehicles shall pay an annual state license as provided in this section and shall pay a county license tax of one half the amount of his state license tax for the use of the counties. The following license taxes shall be paid by each dealer, each agent or other person, except agents of a dealer who have procured the licenses required in the following section: in cities and towns of 50,000 or more inhabitants, $140; in cities and towns of over 25,000 and not exceeding 50,000 inhabitants, $100; in cities and towns of over 10,000 and not exceeding 25,000 inhabitants, $80; in cities and towns of over 5,000 and not exceeding 10,000 inhabitants, $65; in cities and towns of over 2,500 and not exceeding 5,000 inhabitants, $50; in cities and towns of 2,500 and less inhabitants, $30; in all other places, whether incorporated or not, $30; provided, that a person maintaining more than one place of business in the same city or town for the sale of automobiles, trucks or other self-propelled vehicles shall pay an additional license tax of one half of the license tax levied on his principal place of business for each additional place of business; provided, that the licensed dealer may maintain a used car lot for the sale or use of secondhand cars without the payment of an additional license tax. Upon the payment of the license tax prescribed in this section, such dealer shall not be required to pay the license tax as provided in Sections 40-12-53 through 40-12-55, 40-12-60, 40-12-62 and 40-12-169. (Acts 1939, No. 370, p. 497; Code 1940, T. 51, § 462.)

§ 40-12-52. Automobile salesmen.

Each person, dealer or agent selling, offering to sell or soliciting orders for the sale of motor vehicles to the ultimate consumer who does not maintain a regularly established place of business in this state for the sale of such motor vehicles shall be required to pay an annual license tax of $200.00 for use of the state and $100.00 for use of the county. Both a state and county license tax shall be payable in each county in which such person engages in any of the activities herein mentioned in this section. (Acts 1939, No. 370, p. 497; Code 1940, T. 51, § 463; Acts 1943, No. 315, p. 305; Act 1965, 2nd Ex. Sess., No. 85, p. 116; Acts 1971, No. 787, p. 1520.)

§ 40-12-53. Automobile accessory dealers.

Each person selling motor vehicle accessories, including automobile radios, air-conditioning units, motor ve-

hicle parts, motor vehicle batteries and tires, shall pay the following annual license tax in cities of:

Over 100,000 population	$40.00
25,000 to 100,000 population	30.00
5,000 to 25,000 population	20.00
2,000 to 5,000 population	10.00
All other places, whether incorporated or not	5.00

Regularly licensed filling stations or garages are not required to pay the above accessories license tax if their stock of accessories at any time does not exceed the wholesale value of $75. (Acts 1935, No. 194, p. 256; Acts 1939, No. 596, p. 966; Code 1940, T. 51, § 465; Acts 1959, No. 476, p. 1195.)

§ 40-12-54. Automobile garages and shops.

Garages or shops where automobiles or other motor vehicles are repaired, painted, trimmed or welded for the public shall pay the following license taxes: each shop where the work is done by one man, $5; each shop where the work is done by two men, $10; each shop where the work is done by more than two men shall pay a license of $10, and an additional license of $5 for each workman in excess of two so employed. Where garage or shop owners do work in shops they shall be counted as workmen. The maximum number of men employed at any time during the license year shall be the basis of computing the license due. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 466.)

§ 40-12-55. Automobile storage garages.

For each garage where a charge is made for the storage of motor vehicles there shall be a license tax of $2 for each 1,000 square feet or fraction thereof up to 50,000 square feet. On each 1,000 square feet or fraction thereof in excess of 50,000 square feet, the license tax

shall be $1 on each additional square footage of space. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 467.)

§ 40-12-56. Automobile storage other than in garages.

Each lot or place other than a storage garage where a charge is made for storage of motor vehicles shall pay the following annual license tax: for each 1,000 square feet or major fraction thereof up to 50,000 square feet, $1; on each 1,000 square feet or major fraction thereof in excess of 50,000 square feet the license tax shall be $.50. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 468.)

§ 40-12-57. Automobile tire retreading shops.

Retreading or tire rebuilding shops where motor vehicle tires are retreaded shall pay a license tax of $20. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 469.)

§ 40-12-58. Barbers.

Each person engaged in the business of operating a barbershop shall pay a license fee of $2.50 for each chair. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 470.)

§ 40-12-59. Baseball parks.

Each owner or lessee of a baseball park where admission fees are charged shall pay the following license taxes: in cities or towns of less than 10,000 inhabitants, or within five miles thereof, $10; in cities or towns of 10,000 and less than 25,000 inhabitants, or within five miles thereof, $25; in cities and towns of 25,000 inhabitants and less than 50,000 inhabitants, or within five miles thereof, $50; in cities and towns of 50,000 inhabitants or more, or within five miles of any such city or town, $100; provided, that when baseball is allowed by law to be played in any city or town on Sunday, the license tax therefor in such city or town shall be double the amount

hereinbefore named. This section shall not apply to baseball parks owned or maintained in good faith by educational institutions located in this state. The provisions of this title permitting the payment of a half-year license after April 1 shall not apply to this section. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 471.)

§ 40-12-60. Battery shops.

Each battery shop for the repairing and recharging and selling of batteries shall pay the following license taxes: in cities and towns of over 60,000 inhabitants, $20; in cities and towns of 16,000 inhabitants and not over 60,000 inhabitants, $15; in cities and towns of 5,000 and not over 16,000 inhabitants, $10; in all other places, whether incorporated or not, $5. The above license tax shall not apply unless a complete battery service is rendered. Each manufacturer of batteries shall pay a license tax of $100; provided, that such manufacturer paying the license hereunder shall not be required to pay the license under Section 40-12-172. (Acts 1935, No. 194, p. 256; Acts 1939, No. 597, p. 967; Code 1940, T. 51, § 472; Acts 1943, No. 567, p. 569.)

§ 40-12-61. Beauty parlors, etc.

Each person operating what is generally known as a beauty parlor or other place where hairdressing, facial treatments, manicuring or hair waving is done shall pay a license tax of $10 and for each operator so employed, as follows: in cities of more than 60,000 inhabitants, $6; in cities of less than 60,000 inhabitants and all other places whether incorporated or not, $4. This schedule of fees shall apply to beauty parlor colleges where said colleges engage in beauty parlor work for which a charge is made or material used is charged therefor. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 473.)

§ 40-12-62. Bicycles and motorcycles; dealer tags.

Each person other than a licensee under Section 40-12-51 engaging in the business of dealing in, renting or hiring bicycles or motorcycles shall pay the following license tax: in cities or towns of 20,000 inhabitants or over, $15; in cities or towns of 10,000 to 20,000 inhabitants, $10; in all other places, whether incorporated or not, $5. Each dealer may purchase dealers' tags not to exceed five for any company or firm at a cost of $1 each. Use of these tags for other than demonstration purposes shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than $5 nor more than $100. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 156, p. 178; Code 1940, T. 51, § 474.)

§ 40-12-63. Blueprint makers.

Each person engaging in the business of making blueprints or developing the same from tracings or drawings for pay shall pay a license tax of $15 for engaging in such business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 475.)

§ 40-12-64. Bond makers.

Each person engaged in the business of making bonds and charging for the same, except guaranty companies or corporations otherwise specifically licensed, shall pay a license tax of $100 per annum. The payment of the license tax required by this section shall authorize the doing of business only in the town, city or county where paid. No person engaged in the business of making bonds and charging for the same shall be exempt from paying said license tax. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 477.)

§ 40-12-65. Bottlers.

Each person engaged in manufacturing, producing or bottling in bottles or other containers, soda water, carbonated drinks, fruit juices or imitations thereof, flavored milk and any preparations known as soft drinks shall not use any machine, machines or apparatus for the filling or bottling of the same until such person shall have first applied, paid for and obtained from the probate judge a license. The amount of the license tax for each machine shall be graded or proportioned as follows: on each machine bottling, per minute, less than 16 bottles, $40 state license tax and $40 county license tax; 16 and less than 30 bottles, $90 state license tax and $90 county license tax; 30 and less than 40 bottles, $140 state license tax and $140 county license tax; 40 and less than 60 bottles, $200 state license tax and $200 county license tax; and 60 and less than 75 bottles, $300 state license tax and $300 county license tax; 75 and less than 100 bottles, $325 state license tax and $325 county license tax; 100 and less than 150 bottles, $450 state license tax and $450 county license tax; 150 bottles and over, $500 state license tax and $500 county license tax. Where any person has within his bottling plant or place of manufacture more than one bottling machine, then such person shall pay the license herein specified upon every such bottling machine or apparatus whether in actual operation or not; provided, that such bottling machine or apparatus is in an operating condition. The person applying for such license shall file an application, under oath, stating the name, make, model of his machine, name and address of manufacturer, whether it is low-pressure equipment or high-pressure equipment, or otherwise, contents, capacity of bottles used and giving its bottling capacity.

"Capacity" shall be based on the number of six and one-half ounce bottles that may be bottled per minute as rated by the manufacturer, or the number of such bottles

that are bottled per minute as determined by inspection and actual count, whichever may be greater. Where the machine or apparatus used in the filling and bottling of products covered by this section is also used in the filling and bottling of dairy products, the "capacity" of such machine or apparatus shall be based upon the percentage of time such machine or apparatus is used in the daily operation for the bottling of the products covered by this section. The percentage of time which the machine or apparatus is used for the bottling of products covered by this section shall be determined by inspection and actual count, and where the percentage of time used in the bottling of products covered in this section shall be 20 percent or less of the total operational time, the person so engaged in the bottling of products covered by this section shall pay 20 percent of the amount of the license as proportioned above based upon the number of six and one-half ounce bottles that may be bottled per minute as rated by the manufacturer. Any person using his bottling machinery for the bottling of dairy products and products covered by this section shall be taxed only upon that machine or machines which are used in the bottling of products covered by this section regardless of the number of machines which may be located within his bottling plant or place of manufacture. Bottlers paying the license tax hereunder where such business is engaged in bottling drinks exclusively shall be exempt from payment of transient dealer's license levied under Section 40-12-172 and wholesale bottler's license levied under Section 40-12-70. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 476; Acts 1945, No. 504, p. 729; Acts 1953, No. 704, p. 960.)

§ 40-12-66. Bowling alleys.

Bowling alleys or tenpin alleys for the use of which money or other compensation is charged shall pay a li-

cense tax of $10 for each alley. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 478.)

§ 40-12-67. Brokers and agents of iron, railway, etc., supplies.

Each person, other than a merchant paying an ad valorem tax on his stock of goods, who shall as agent or broker sell iron, railway supplies, furnace supplies or mining supplies, shall pay a privilege tax of $25. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 479.)

§ 40-12-68. Brooms, brushes, mops, etc.

Each person operating a manufactory plant for the making of brooms, brushes, mops or similar articles shall pay a license tax of $10; provided, that this shall not apply to blind persons. Such license tax shall not apply where not more than three persons are employed for the making of said brooms. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 480.)

§ 40-12-69. Cereal beverages, carbonated or other soft drinks — Retailers.

(a) Each person engaged in the business of selling at retail cereal beverages, carbonated or other soft drinks in bottles, cans or other sealed containers shall pay an annual license tax of $2.50.

(b) Each person engaged in the retail business of selling soft drinks in whatever form, by means of taps or other dispensing devices, shall pay annually the following license taxes: in unincorporated places, and towns and cities of not over 5,000 inhabitants, $10; in cities and towns of over 5,000 and not over 15,000 inhabitants, $15; in cities of over 15,000 and not over 25,000 inhabitants, $20; in cities of more than 25,000 inhabitants, $25. A person licensed under this subsection shall be thereby

also licensed to sell at retail cereal beverages, carbonated or other soft drinks in bottles, cans or other sealed containers without the payment of the license imposed in subsection (a) of this section. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 482.)

§ 40-12-70. Cereal beverages, carbonated or other soft drinks — Wholesalers.

Each person engaged in the business of selling at wholesale nonalcoholic, carbonated or other soft drinks shall pay an annual license tax of $50; provided, that bottlers who have taken out the bottle license for operating plants in this state shall not be liable under this section, nor shall such bottlers be liable for any county or state license under Section 40-12-174, nor as transient vendors or dealers or peddlers. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 483.)

§ 40-12-71. Certified public accountants.

(a) In lieu of any other privilege license fees levied under the revenue laws of the State of Alabama, each person who holds a certificate as a certified public accountant and who is a resident of the State of Alabama and who is engaged in the practice of public accounting in the State of Alabama shall pay an annual license fee of $25, but no license fee shall be paid to the county. Such license shall be obtained from the probate judge or licensing agency in the county where the business of a certified public accountant is located and shall be due and delinquent as provided by Section 40-12-26. All money paid into the treasury for license under this section shall be deposited in the State Treasury to the credit of the Alabama State Board of Public Accountancy and shall constitute a separate fund to be disbursed as provided in subsection (b) of this section.

(b) The fund provided by subsection (a) of this section shall be used by the Alabama State Board of Public Accountancy to defray the expenses for administering and enforcing the laws of the State of Alabama pertaining to the practice of public accounting and the other necessary purposes and expenses of said board not otherwise available and provided pursuant to Section 34-1-3; and the said Alabama State Board of Public Accountancy shall have the power to direct the disbursement of said fund, which shall be paid on the warranty of the State Comptroller upon certificate or voucher of the secretary of said board, approved by the chairman or vice-chairman of said board. No funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Article 4 of Chapter 4 of Title 41, and only in amounts as stipulated in the general appropriations bill.

(c) No license fee as herein provided shall be due or payable by any certified public accountant employed by any state or federal government agency, educational institution or industry, who does not perform public accounting service for which he is paid. (Acts 1969, No. 269, p. 599, § § 1-3.)

§ 40-12-72. Cigars, cigarettes, cheroots, etc. — Retailers.

Each retail dealer in cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco or snuff, or any substitute therefor, either or all, shall pay to the state the following privilege license tax: in cities of 25,000 inhabitants and over, $15; in cities or towns of 10,000 inhabitants and less than 25,000 inhabitants, $10; in cities or towns of 5,000 inhabitants and less than 10,000 inhabitants, $5; in cities or towns of 2,000 inhabitants and less than 5,000 inhabitants, $3; in all other places, whether incorporated or not, $2. This privilege license tax is levied on each place of business owned or operated by retail dealers, whether under the same roof or not. The phrase "retail dealer" as used in this section shall include every person, firm, corporation, club or association, other than a wholesale dealer as defined in Section 40-12-73, who shall sell or store or offer for sale any one or more of the articles enumerated herein, irrespective of quantity or amount, or the number of sales. The privilege license tax herein defined shall be in addition to the sales tax as provided in Section 40-25-2. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 484.)

§ 40-12-73. Cigars, cigarettes, cheroots, etc. — Wholesalers.

Each wholesale dealer in cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff or any substitute therefor, either or all, shall pay one privilege license tax to the state of $100 and $5 to each county in which such wholesale dealer does business. The phrase "wholesale dealer" as used in this section shall include persons, firms, corporations, clubs or associations who shall sell or store or offer to sell any one or more of the articles enumerated herein to retail dealers for the purpose of resale only. The privilege license tax herein levied shall be in addition to the sales tax as provided in Section 40-25-2. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 485.)

§ 40-12-74. Circuses.

Each person operating a circus shall pay the following license tax: where the seating capacity of the circus is less than 2,000, $50; where the seating capacity is 2,000 and less than 4,000, $100; where the seating capacity is 4,000 or more, $200; and the license tax hereinabove provided shall include the license tax for a menagerie accompanying the circus. The payment of the proper license tax, as

is herein provided, will entitle the circus to operate for one week in the same place and at the same time on the same license. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 486; Acts 1953, No. 745, p. 1008; Acts 1967, No. 411, p. 1067.)

§ 40-12-75. Cleaning and pressing establishments.

Each person conducting what is commonly known as a cleaning or pressing business, where wearing apparel is cleaned or pressed, shall pay a license tax of $5 in all places of less than 10,000 inhabitants, whether incorporated or not; in cities or towns of 10,000 inhabitants and less than 50,000 inhabitants ,$10; in cities of 50,000 inhabitants or more, $15; provided, that where dyeing is done singularly or in conjunction with the cleaning and pressing business, $10 additional. Each place maintained or operated for the reception or collection of such articles and not at the location of such pressing, cleaning or dyeing plant paying a license as such shall pay a license tax of $5. A person not having a place of business within the State of Alabama where such work is actually performed shall pay a license tax of $15 for the reception and collection of such articles. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 487.)

§ 40-12-76. Coal and coke dealers — Maintaining yards.

Each person dealing in coal or coke and maintaining one or more established yards, with adequate wagon or truck scales, from which retail deliveries are loaded, shall pay the following license tax for each yard: in cities or towns of 5,000 inhabitants or less, whether incorporated or not, $5; in cities of more than 5,000 and not more than 20,000 inhabitants, $10; in cities of more than 20,000 inhabitants, $20. This section and Section 40-12-77 shall not apply to persons whose inventory and sales

are in quantities of less than one-half ton. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 488.)

§ 40-12-77. Coal and coke dealers — Not maintaining yards.

Each person, other than those qualifying under Section 40-12-76, engaged in selling, distributing or hauling or delivering coal or coke by truck or other vehicle, whether as dealer, employee, agent, broker, sales agent or mining company who sells, hauls or delivers direct from mine or plant to consumer shall pay a privilege license tax on the first truck or other vehicle used in said business of $15, and on each additional truck or vehicle $3, but the provisions of this section shall not apply to persons whose inventory and sales are in quantities of not more than one ton, and in no event shall this license be issued for less than one year, such license to be in addition to the regular motor vehicle license. Each such person shall register each truck or other vehicle so used in such business in the county in the office collecting and issuing licenses. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 489.)

§ 40-12-78. Coffins and caskets — Manufacturers.

Each manufacturer of coffins or caskets shall pay a license tax of $100. This license tax shall not apply to any person who manufactures coffins or caskets without the assistance of any other person or without the assistance of hired labor and which coffins or caskets retail for not exceeding $10. This section shall not apply to local woodworking plants or carpenter shops whose principal business is not the manufacturing of coffins or caskets and who make coffins for paupers for local governing bodies or for charity. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 490.)

§ 40-12-79. Coffins and caskets — Dealers and agents.

Each dealer in coffins or caskets and each agent or person taking or soliciting orders for retail deliveries of coffins or caskets shall pay the following license tax: in unincorporated places or towns of 1,000 inhabitants or less, $10; in towns and cities of over 1,000 inhabitants and not exceeding 7,000 inhabitants, $20; in cities of over 7,000 and not exceeding 35,000 inhabitants, $50; in cities of over 35,000 inhabitants, $100. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 491.)

§ 40-12-80. Collection agencies.

Each collection agency shall pay the following license tax: in towns and cities of 20,000 or more inhabitants, $100; in towns and cities of less than 20,000 inhabitants, $25. Each person who shall employ agents to solicit claims for collection from persons, firms or corporations in the state shall be deemed a collection agency within the meaning of this section. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 492.)

§ 40-12-81. Commission merchants or merchandise brokers.

Each commission merchant or merchandise broker shall pay one state license tax of $25 and one county license tax of $12.50. Such payment shall be made in the county in which such commission merchant or merchandise broker maintains his principal place of business. Such license shall authorize such commission merchant or merchandise broker to do business in any county of the state without the payment of any further state or county license tax. The payment of the license tax in one county of the state as evidenced by the license certificate of the probate judge shall be sufficient. (Acts 1935, No.

194, p. 256; Code 1940, T. 51, § 493; Acts 1943, No. 418, p. 384.)

§ 40-12-82. Concerts, musical entertainments, etc.

For each concert, musical entertainment, public lecture or other public entertainment where charges are made for admission, or for the use of any instrument or device or the participation in any exercises or entertainment not given wholly for charitable, school or religious purposes and not otherwise provided for, the license tax shall be $10; but this provision shall not apply to exhibitions or entertainments given in theaters when the owners or managers thereof have taken out licenses as owners or managers; and provided further, that this license tax shall not be charged for any lecture course given as part of the course of instruction in any educational institution; provided further, that the provisions of this section shall not apply to chautauquas, lecture lyceums or exhibits held under the auspices of religious or charitable associations. In all cases where such exhibitions shall be in the nature of a continuous show or performance, the license tax shall be $5 per day, $15 per week or $30 per month. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 494.)

§ 40-12-83. Conditional sales contracts, drafts, acceptances, etc.; dealers in.

(a) Each person engaged in discounting or buying conditional sales contracts, drafts, acceptances, notes or mortgages on personal property shall pay an annual license tax as follows: employing capital of $50,000 or less, $5; $50,000 to $100,000, $10; $100,000 to $150,000, $15; $150,000 to $300,000, $25; $300,000 to $500,000, $100; $500,000 and up, $300, the payment of which shall be sufficient to engage in business in any county of the state except the county in which the principal office is located,

in which case the county license tax shall be one half of the above schedule.

(b) Each person engaging in business of lending money on salaries or making industrial or personal loans shall pay an annual license tax of $100 for each county in which he engages in business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 495; Acts 1953, No. 680, p. 934.)

§ 40-12-84. Construction companies or contractors.

Any person, firm or corporation accepting orders or contracts for doing any work on or in any building or structure requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, electric wiring, or other steel or any other building material, or accepting contracts to do any paving or curbing on sidewalks or streets, public or private property, using asphalt, brick, stone, cement, wood or other composition, or accepting orders for or contracts to excavate earth, rock or other material for foundations or any other purpose, or accepting orders or contracts to construct any sewer of stone, brick, terra cotta or other material, or accepting contracts to construct highways, bridges, dams or railroads, shall be deemed a contractor. Every contractor shall procure from the probate judge of the county in which he has his principal office a license to carry on the business of a contractor; provided, that if such contractor has no such office in this state, then he shall procure such license from the probate judge of the county where the contract is to be performed. Every such contractor shall pay a license tax to be ascertained on the basis of the gross amount of all orders or contracts accepted, exclusive of orders or contracts pertaining to state or county road and bridge projects, as follows: If the gross amount of all orders or contracts accepted aggregates $5,000 and not exceeding $10,000, he shall pay the sum of $10; if the

amount of such orders or contracts is more than $10,000 and does not exceed $20,000, $15; if the amount of such orders or contracts exceeds $20,000 and does not exceed $50,000, $25; if the amount of such orders or contracts exceeds $50,000 and does not exceed $100,000, $50; if the amount of such orders or contracts exceeds $100,000 and does not exceed $150,000, $150; if the amount of such orders or contracts exceeds $150,000 and does not exceed $200,000, $200; if the amount of such orders or contracts exceeds $200,000, $250; and, when such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above prescribed, he shall not accept any contract or contracts during such year, the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license. The payment of the license tax in one county in the state, as evidenced by the license or official certificate of the probate judge, shall be sufficient. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 496; Acts 1953, No. 749, p. 1012.)

§ 40-12-85. Cotton buyers.

Each person whose principal business is buying cotton shall pay one state license tax of $25 and shall also pay a license tax of $10 in each county in which such person shall maintain an office or buy cotton. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 497.)

§ 40-12-86. Cotton compresses.

For each person operating any compress for the purpose of compressing cotton, the license tax shall be as

follows: for each compress compressing not more than 20,000 bales of cotton per annum, $75; for each compress compressing more than 20,000 bales of cotton and less than 50,000 bales of cotton per annum, $100; for each compress compressing 50,000 bales or more of cotton per annum, $250, such tax to be measured by the number of bales of cotton compressed during the previous year. Each person applying for such license shall file with the probate judge a sworn statement showing the number of bales compressed during the preceding year. A person beginning the operation of a new compress shall be liable for the minimum license tax herein levied for the first year. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 498.)

§ 40-12-87. Cottonseed oil mills, cotton mills, factories, etc.

Every person operating a cottonseed oil mill; cotton mill; cloth mill; towel factory; garment factory; yarn mill; hosiery mill; peanut mill; peanut oil mill; peanut shelling plant; paper mill; pulp mill; mill manufacturing sheeting, rugs, bags, hats, cement, carpets, lime, plaster, soap, chemical, acid (other than fertilizer) explosive; and all mills manufacturing any finished or semifinished products of tobacco, thread, yarn, cloth, fur, felt, nylon, paper, jute, rubber, iron, iron ore, copper, brass, tin, coal, coke, sand, cement, glass, clay, slag, aluminum, bauxite, ore, grain, other than what is commonly called a grist mill, oats, corn, rye, synthetic rubber, stone, oil, crude oil, tar, resin, asphalt, paraffin, plastics, fibers, straw, cellulose or other factory where materials are woven, made or assembled shall pay the following license tax: $10 where the investment for plant, equipment, supplies and fixtures is less than $15,000; $20 where the investment for plant, equipment, supplies and fixtures is $15,000 and less than $25,000; $30 where the investment for

plant, equipment, supplies and fixtures is $25,000 and less than $50,000; $50 where the investment for plant, equipment, supplies and fixtures is $50,000 and less than $100,000; $100 where the investment for plant, equipment, supplies and fixtures is $100,000 and less than $500,000; $150 where the investment for plant, equipment, supplies and fixtures is $500,000 and less than $1,000,000; $200 where the investment for plant, equipment, supplies and fixtures is $1,000,000 and over. Such investment shall be the total capital employed in such plant, and the person applying for such license shall furnish a sworn statement showing the amount of the investment and shall accompany the same with a statement taken from the books of the company, showing the amount of such investment, and such books shall at all times be subject to the inspection of the Department of Revenue or its agents. The license taxes levied under this section shall not apply where the factory, mill or plant which would be licensed by this section is covered by a specific license under this article. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 499; Acts 1947, No. 136, p. 44.)

§ 40-12-88. Cotton warehouses.

Each person operating a warehouse or yard for the storage of cotton for compensation shall pay a license tax to the state as follows: every such warehouse storing not more than 5,000 bales in the preceding calendar year, $20; more than 5,000 and not more than 10,000 bales, $40; more than 10,000 and not more than 15,000 bales, $60; more than 15,000 and not more than 20,000 bales, $100; more than 20,000 and not more than 30,000 bales, $150; more than 30,000 bales, $200. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 500.)

§ 40-12-89. Credit agencies.

(a) Each person, firm or corporation inquiring into and reporting on the credit and standing of persons, firms or corporations in this state shall pay the following license tax:

(1) In each county where the population exceeds 300,000, a state license tax of $200 for each place of business and a county license tax of $50;

(2) In each county where the population exceeds 200,000, but is not more than 300,000, a state license tax of $150 for each place of business and a county license tax of $50;

(3) In each county where the population exceeds 100,000, but is not more than 200,000, a state license tax of $100 for each place of business and a county license tax of $25;

(4) In each county where the population exceeds 50,000, but is not more than 100,000, a state license tax of $50 for each place of business and a county license tax of $25; and

(5) In all other counties, $25 to the state for each place of business and $12.50 to the county.

(b) This section shall not apply to mutual trade organizations where credit information is exchanged among members at actual cost of service.

(c) Where any person shall pay to the state the license tax of $200 for an office which supervises the operations of suboffices under its jurisdiction, no additional state license tax shall be due for such suboffice, but a county license tax of $50 shall be paid in each county in which a suboffice is located.

(d) The population shall be according to the last or any subsequent federal decennial census. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 501; Acts 1953, No. 468, p. 584; Acts 1963, No. 566, p. 1189.)

§ 40-12-90. Creosoting, etc.

Each person operating a creosoting or other preservative treatment plant, where crossties, crossarms, poles, posts or other lumber or timbers are creosoted or treated shall pay a license tax based on the capital invested in such plant for equipment, raw materials, finished materials, supplies, realty and all personalty, as follows: where the capital invested is less than $5,000, $20 for the state and $10 for the county; where the capital invested is $5,000 and less than $25,000, $50 for the state and $25 for the county; where the capital invested is $25,000 and less than $50,000, $75 for the state and $37.50 for the county; where the capital invested is $50,000 or over, $100 for the state and $50 for the county. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 502; Acts 1943, No. 419, p. 385.)

§ 40-12-91. Delicatessen shops.

Each delicatessen where cooked foods are sold for consumption other than on the premises shall pay a license tax of $10. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 503.)

§ 40-12-92. Dentists.

Each person practicing the profession of dentistry in cities or towns of over 25,000 inhabitants shall pay an annual license tax of $25; in cities or towns of more than 5,000 and not exceeding 25,000 inhabitants, $15; in cities or towns of more than 1,000 and not exceeding 5,000 inhabitants, $10; in all other places whether incorporated or not, $5; but no license shall be paid the county. If such business is conducted as a firm or as a corporation in which more than one dentist is engaged, each dentist so engaged shall pay the license tax as above stated; provided, that the license tax imposed by the sec-

tion shall not apply until such dentist shall have practiced his profession as long as two years. Seventy-five percent of all moneys paid into the treasury for licenses under this section shall be paid to the secretary-treasurer of the Board of Dental Examiners each year. Such amounts shall be paid annually upon the warrant of the comptroller drawn on the treasury; said funds shall be used by the Board of Dental Examiners to defray the expenses of enforcing the laws of the State of Alabama relating to the practice of dentistry, for other necessary purposes and expenses of such board and in the promotion of the arts and science of dentistry in the State of Alabama. As soon after the first day of each year as practicable, the State Treasurer shall certify to the secretary-treasurer of the Board of Dental Examiners the names of dentists who have paid such license fee. (Acts 1935, No. 194, p. 256; Acts 1935, No. 435, p. 914; Code 1940, T. 51, § 504; Acts 1953, No. 814, p. 1096; Acts 1961, Ex. Sess., No. 59, p. 1927.)

§ 40-12-93. Detective agencies.

Each person engaged in the business of operating a detective agency, or each company or corporation doing business as such in this state, shall pay a license tax of $100. Each person so engaged who also solicits or receives notes or accounts for collection shall pay an additional license tax of $100. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 505.)

§ 40-12-94. Developing and printing films.

Each person engaged in the business of developing and printing Kodak plates or films, or camera plates or films, or other photographic films or plates shall pay a license tax of $5; provided, that this license tax shall not be applicable to any person paying the photographer's

license tax levied by this title. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 506.)

§ 40-12-95. Devices for testing skill and strength used for profit.

For each device used by persons as a source of profit to themselves, such as throwing at wooden figures or any object of like character, striking at an object to test the strength, blowing to test the lungs, or other devices of like character, or for operating a cane rack, a knife rack or similar rack or table, there shall be paid a license tax of $25, in each county in which it is operated, but this section shall not be construed to legalize the operation of any device which is now prohibited by law. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 507.)

§ 40-12-96. Directories.

Each person compiling, selling or offering for sale directories shall pay to the state license taxes as follows: for each city or town of 100,000 inhabitants or over, $150; in cities or towns of 50,000 and less than 100,000 inhabitants, $75; in cities or towns of 20,000 and less than 50,000 inhabitants, $50; in cities and towns of less than 20,000 inhabitants, $15; provided, that this section shall not apply to directories issued by any person in connection with or as a part of a business for which a general license tax is provided. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 509.)

§ 40-12-97. Electric refrigerators, electric or gas heaters, etc.

For each dealer in electric, gas or other mechanical refrigerators, electric or gas heaters, electric or gas water heaters, electric or gas stoves, or for each electrical or gas repair shop, or electrical or gas supply shop there shall

be paid a license tax as follows: in cities of 100,000 inhabitants or over, $30; in cities of 50,000 and less than 100,000 inhabitants, $20; in cities of 10,000 and less than 50,000 inhabitants, $10; and in places of less than 10,000 inhabitants, whether incorporated or not, $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 511.)

§ 40-12-98. Embalmers.

Each embalmer shall pay an annual license tax of $10. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 512.)

§ 40-12-99. Engineers.

Each person practicing for the public the profession of civil, electrical, mining, mechanical or radio engineering shall pay an annual license tax of $20 to the state, but no license shall be paid to the county. If such business is conducted as a firm or corporation in which more than one engineer is engaged, each engineer so engaged shall pay a license tax of $20. No such engineer shall be required to pay this license tax until after he has practiced his profession for two years in this state or elsewhere. An engineer who is an employee of the state or of any county or municipality at a fixed salary and who engages in no other engineering work for compensation is not subject to this license tax when so employed. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 522.)

§ 40-12-100. Fertilizer factories.

Each person owning or operating any fertilizer factory shall pay a license tax as follows: in which the capital invested does not exceed $25,000, $50; in which the capital invested exceeds $25,000 and does not exceed $50,000, $100; in which the capital invested exceeds $50,000 and does not exceed $100,000, $200; in which the capital invested exceeds $100,000, $250 for each factory. Each fertilizer mixing plant shall pay a license tax of $15. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 524.)

§ 40-12-101. Fire, closing out, etc., sales.

Each person, other than the original bona fide owners, selling goods, wares or merchandise as an insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or closing out sale, or a sale of goods, wares and merchandise damaged by fire, smoke, water or otherwise, shall pay a license tax of $100. The provisions of this section shall not apply to sheriffs, constables or other public or court officers or to any other persons acting under the license, discretion or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 525.)

§ 40-12-102. Fireworks.

Each dealer in fireworks such as roman candles, sky rockets, torpedoes, firecrackers, cannon crackers, cap guns, devil wheels and such other articles commonly known as fireworks shall pay the following license tax: in cities, or within two miles of said cities, of 25,000 population or more, $50; in cities, or within two miles of said cities, of 10,000 population and not more than 25,000, $30; in cities, or within two miles of said cities, of 5,000 to 10,000 population, $20; and in all other places, whether incorporated or not, $10. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 526.)

§ 40-12-103. Flying jennies, merry-go-rounds, etc.

For each flying jenny, called also hobbyhorses, and merry-go-rounds, roller coasters or other devices of like

character, there shall be paid a license tax of $50 per year, $20 for each month or $5 for each week in each place in which such device is operated, whether incorporated or not. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 527.)

§ 40-12-104. Fortunetellers, palmists, clairvoyants, etc.

Each fortuneteller, palmist, clairvoyant, astrologer, phrenologist or crystal gazer, where any fee is charged directly or indirectly or any gratuity is accepted, shall pay a license tax of $40. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 28.)

§ 40-12-105. Fruit dealers.

Each person selling fruit from a fruit stand, store or other established place of business shall pay a license tax as follows: in cities or towns of over 10,000 inhabitants, $10; and in all other places, whether incorporated or not, $5. This section shall not apply to regular merchants carrying fruit as a part of their stock of merchandise who do not display same in front of their place of business and whose ad valorem assessment on the stock of merchandise at the place where such fruit is sold is in excess of $100. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 529.)

§ 40-12-106. Gasoline stations and pumps.

Each person operating for profit a gasoline filling station or pump in cities or towns, or within three miles thereof, shall, on October 1, of each year, pay the following annual privilege tax: in cities of 100,000 inhabitants and over, where only one pump or filler is used, $28 and, for each additional pump, $21; in cities or towns of 40,000 inhabitants and less than 100,000 inhabitants, where only one pump or filler is used, $21 and, for each

additional pump, $14; in cities or towns of 12,000 inhabitants and less than 40,000, where only one pump or filler is used, $18 and, for each additional pump, $10; in cities or towns of 5,000 inhabitants and less than 12,000, where only one pump or filler is used, $14 and, for each additional pump, $7; in incorporated towns of 1,000 inhabitants and less than 5,000, where only one pump or filler is used, $7 and, for each additional pump, $5; in incorporated towns of less than 1,000 inhabitants, $3.50 and, for each additional pump, $2.50; and in all other places, whether incorporated or not, $2.50 and, for each additional pump, $2.50. (Acts 1935, No. 194, p. 256; Acts 1935, No. 402, p. 876; Acts 1939, No. 604, p. 968; Code 1940, T. 51, § 531.)

§ 40-12-107. Glass.

Each person whose principal business is the selling of plate glass or other glass shall pay the following license tax: in cities of 100,000 inhabitants or more, $50; in cities or towns of more than 30,000 and under 100,000 inhabitants, $35; in cities or towns of more than 7,000 and under 30,000 inhabitants, $20; in all other places, $10. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 532.)

§ 40-12-108. Golf, miniature golf, etc., courses.

Each person operating a golf course or courses where the game of golf, miniature golf or a similar game is played, either indoors or out, where a charge is made, shall pay the following license tax: in towns and cities of 500 and not exceeding 10,000 inhabitants, or within 10 miles of the city limits thereof, $10 for each golf course and $5 for each table or course where miniature golf or a similar game is played; in towns or cities of over 10,000 and not exceeding 35,000 inhabitants, or within 10 miles of the city limits thereof, $20 for each golf course and $10 for each table or course where miniature golf or a

similar game is played; in cities having more than 35,000 inhabitants, or within 10 miles of the city limits thereof, $40 for each golf course and $15 for each table or course where miniature golf or similar game is played; and in all other places, whether incorporated or not, for each golf course $5 and for each table or course where miniature golf or a similar game is played, $2.50. This section shall not apply to municipally owned and operated golf courses or tables, nor to regularly organized clubs or other private organizations maintaining and operating a golf course or tables for the use of its members only. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 533.)

§ 40-12-109. Hat-cleaning establishments.

Each person conducting what is commonly known as a hat-cleaning establishment shall pay the following license tax: for each place where such work is actually done, a license tax of $5 in cities and towns of less than 10,000 inhabitants; in cities and towns of 10,000 inhabitants and over, $10 and, in addition, shall pay $5 for each separate place of business within this state owned or operated for the reception and collection of such articles. A person not having a place of business within the State of Alabama where such work is actually performed shall pay a license tax of $5 for each vehicle and for each regular place of business within this state owned or operated or the reception and collection of such articles. This section shall not apply to persons conducting what is commonly known as a cleaning and pressing business who have paid the license tax provided therefor under Section 40-12-75. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 534.)

§ 40-12-110. Hide, fur, etc., dealers.

Each person dealing in hides or furs, whether principal business or not, shall pay the following license tax: in

counties of 100,000 inhabitants or over, $25; in counties of 40,000 inhabitants and less than 100,000 inhabitants, $20; and in counties of less than 40,000 inhabitants, $15. The license herein fixed shall not apply to persons dealing in cattle, sheep, goat or horse hides. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 535.)

§ 40-12-111. Horse show, rodeo, or dog and pony shows.

Every horse show, rodeo, dog and pony show or like exhibition or show, where any charge is made therefor, shall pay a license tax of $25 for each day of performance. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 510; Acts 1967, No. 412, p. 1068.)

§ 40-12-112. Horse, mule, etc., dealers.

Each person engaged in the business of buying, selling, or exchanging horses, mules, jacks or jennets shall pay a license tax of $20 in each county where such person engages in said business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 536.)

§ 40-12-113. Ice cream.

Each manufacturer of ice cream who sells any part of his output at wholesale shall pay the following license tax: in cities of 35,000 inhabitants and more, $50; in cities of less than 35,000 and not less than 7,000 inhabitants, $10; and in all other places $5. Nothing in this section shall apply to soda fountains and places of like character where the owner or proprietor manufactures ice cream exclusively for service at his established place of business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 538.)

§ 40-12-114. Ice factories.

Each ice factory shall pay an annual license tax of $1 for each ton capacity per day. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 539.)

§ 40-12-115. Innkeepers and hotels.

Each person keeping a public inn or lodginghouse of five or more bedrooms where transient guests are lodged for pay shall be deemed for the purposes of this title to be engaged in the business of keeping a hotel. A transient guest is one who puts up for less than one week at such hotel, but such a house is no less a hotel because some of the guests put up for longer periods than one week. Every person keeping a hotel, as defined in this section, shall pay an annual license tax as follows: hotels with five rooms and not over 15 rooms, $.50 for each room; hotels with over 15 and less than 50 rooms, $1 for each room; hotels with 50 rooms and less than 100 rooms, $1.50 for each room; and hotels with 100 rooms and over, $2 for each room. If meals, food or refreshments are served to the general public and charged for, then the additional license required to be paid by restaurants, cafes, lunch counters and public eating houses shall be paid. Where cottages or annex are operated in connection with or rented by such hotel, this section shall apply to the total of the rooms in the hotel and the cottages and annex. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 540.)

§ 40-12-116. Junk dealers.

Each junk dealer shall pay the following license tax: in all places of less than 1,000 inhabitants, whether incorporated or not, $10; in towns of 1,000 inhabitants and less than 3,000 inhabitants, or within 10 miles thereof, $20; in cities and towns of 3,000 and less than 10,000 inhabitants, or within 10 miles of the city limits thereof, $30; in cities and towns of 10,000 and less than 20,000 inhabitants, or within 10 miles of the city limits thereof, $50; in cities and towns of 20,000 inhabitants and less than 50,000 inhabitants, or within 10 miles of the city limits thereof, $75; and in cities and towns of 50,000 inhabitants and over or within 10 miles of the city limits thereof, $150. Each junk dealer, his clerk, agent or employee shall keep a book open to inspection in which he shall make entries of all articles of railroad iron or brass, pieces of machinery and plumbing material, automobiles, automobile tires, parts and accessories, or other articles purchased by him, together with the name of the party from whom purchased; and, upon failure to keep such book or record and produce it on demand, the dealer shall forfeit his license. Each junk dealer, his clerk, agent or employee to whom any new and unused articles or railroad brass and iron, pieces of machinery, automobiles, automobile tires, parts and accessories or other articles shall be presented for sale shall notify the police authorities that such articles are offered for sale within a reasonable time thereafter, otherwise, his license shall be forfeited. Any junk dealer whose place of business is within 10 miles of more than one city shall pay the license as provided herein for the larger of the cities within 10 miles. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 541.)

§ 40-12-117. Laundered towel, apron, etc., rentals; diaper services.

(a) Each person renting or supplying laundered towels, aprons, coats, linens or supplying other similar service, except those persons engaged in the business of renting diapers who do not rent or supply laundered towels, aprons, coats or linens shall pay the following license tax: in cities of 100,000 inhabitants or over, $50;

in cities or towns of 60,000 and less than 100,000 inhabitants, $35; in cities or towns of 25,000 and less than 60,000 inhabitants, $25; in cities and towns of 10,000 and less than 25,000 inhabitants, $15; and all other places, whether incorporated or not, $10. This section shall not apply to regular laundries which have paid the license taxes on laundries levied by this title. (b) Each person furnishing diaper service or laundered diapers shall pay a license tax of $50 in the county in which he maintains his principal place of business and shall pay a license tax of $7 in each county wherein he engages in the business of furnishing diaper service or laundered diapers other than the county of his principal place of business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 542; Acts 1953, No. 760, p. 1022.)

§ 40-12-118. Laundries.

Each person, firm or corporation who operates what is commonly known as a power or steam laundry shall pay the following license tax: in cities and towns of 35,000 inhabitants and over, $60; in cities and towns of less than 35,000 and not less than 15,000 inhabitants, $30; in cities and towns of less than 15,000 and not less than 5,000 inhabitants, $15; and in all other places, whether incorporated or not, $10. Self-service laundries or concerns commonly known as launderettes shall pay a license tax of 25 percent of the power or steam laundry license. Each laundry operated by hand power shall pay a license tax of $10; provided, that no license shall be required of a person commonly known as a "washwoman." Hotels which operate laundries exclusively for their own guests shall pay a license tax of 25 percent of the foregoing enumerated amounts for power or steam laundries. A person not having a place of business within the State of Alabama where such work is actually performed shall pay a license tax of $25 for the reception or collection of

laundry. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 543; Acts 1950, 5th Ex. Sess., No. 41, p. 85.)

§ 40-12-119. Legerdemain and sleight of hand.

Each exhibition of feats of legerdemain or sleight of hand or other exhibition or entertainment of like kind shall pay an annual license tax of $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 544.)

§ 40-12-120. Lightning rods.

Each person selling or installing lightning rods who maintains his principal and permanent place of business within this state shall pay a license tax of $7.50 to the state and $2.50 to the county in which the principal place of business is located. Each person who sells or installs lightning rods, but whose primary business is not the selling or installing of lightning rods or who does not maintain his principal and permanent place of business within this state, shall pay a license tax of $150 to the state and $75 to the first county in which he does business and for each succeeding county in which he does business an additional license tax of $50, to be divided $37.50 to the state and $12.50 to the county. Each person selling lightning rods in this state shall register with the state fire marshal and furnish his name and address and any other information requested by the fire marshal. Failure to notify the fire marshal of a change of address within 10 days from such change shall constitute a misdemeanor. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 545; Acts 1971, 1st Ex. Sess., No. 132, p. 213.)

§ 40-12-121. Lumber and timber dealers.

Each wholesale dealer or jobber of lumber and timber and each wholesale dealer in lumber and timber on commission whether maintaining an established place of

business or not shall pay a license tax of $100. A sawmill operator, regularly licensed under Section 40-12-154, shall not become liable for the license tax imposed by this section by reason of his purchasing partially manufactured lumber from other sawmills, if the processing of said partially manufactured lumber is completed at the plant of the sawmill operator so purchasing the same and the lumber is thereafter shipped or sold in the same manner as lumber manufactured at the plant of such operator; provided, that such purchases do not exceed in volume the lumber manufactured by such operator at his own plant or plants. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 546; Acts 1945, No. 460, p. 693.)

§ 40-12-122. Lumberyards.

Each person operating a lumberyard shall pay the following license tax: in cities of 100,000 inhabitants and over, $75; in cities of less than 100,000 and not less than 35,000 inhabitants, $40; in cities of less than 35,000 and not less than 7,000 inhabitants, $25; in cities of less than 7,000 inhabitants and not less than 1,000 inhabitants, $10; and in all other places, whether incorporated or not, $5. This section shall not apply to a regularly licensed sawmill selling lumber at retail at its plant. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 547.)

§ 40-12-123. Machinery repair shops.

Each person operating a shop for the repair or rebuilding of machinery or making parts therefor for the public and charging for same shall pay the following license tax: in cities or towns of 100,000 or more inhabitants, $40; in cities or towns of 50,000 and less than 100,000 inhabitants, $25; in cities or towns of 15,000 and less than 50,000 inhabitants, $15; and in all other places, whether incorporated or not, $5. This license shall not

apply to what is commonly known as a blacksmith shop or to shops repairing automobiles where a garage license or an automobile repair license has been taken out. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 548.)

§ 40-12-124. Manicurists, hairdressers, etc.

Each person engaging in the business of manicuring, hairdressing or administering facial treatments shall pay a license tax of $5; provided, that this section shall not apply to such persons employed in beauty shops and beauty shop colleges, paying the license tax as provided under Section 40-12-61. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 549.)

§ 40-12-125. Mattresses, cushions, pillows, etc.

Each person engaging in the business of manufacturing or upholstering cushions, mattresses, pillows or rugs, or the renovating, cleaning or reworking of same, shall pay for the privilege of engaging in such business, $15; provided, that the license tax shall be $5 in towns of 3,000 or less population. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 551.)

§ 40-12-126. Medicine, chemistry, bacteriology, etc.

Each person engaged in the practice of medicine, chemistry, bacteriology, roentgenology or other similar profession, except chemists, bacteriologists, and roentgenologists employed full time by physicians, nonprofit scientific institutions, and hospitals, and except doctors employed exclusively by a medical college, shall pay the following annual license tax: in cities or towns of over 5,000 inhabitants, $25; 1,000 to 5,000 inhabitants, $10; all other places, whether incorporated or not, $5, but no license tax shall be paid to the county. If such business is conducted as a firm or as a corporation in which more

than one person is engaged, each person so engaged shall pay the license tax as above stated. The license tax imposed by this section shall not apply until such person shall have practiced his or her profession as long as two years. Two fifths of the annual license tax herein levied shall remain in the treasury and shall constitute a separate fund to be disbursed by the treasurer as follows: All of such fund arising from licenses paid in each of the separate counties of the state shall be set aside in a separate fund for such county and shall be disbursed by the treasurer, on the order of the board of censors of the medical society of such county, if there is such organization in such county. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 181, p. 210; Code 1940, T. 51, § 552; Acts 1957, No. 379, p. 508.)

§ 40-12-127. Mimeographs, duplicating machines, dictaphones, etc.

Every person engaged in the business of selling or soliciting orders for the sale or purchase of mimeographs, duplicating machines, dictaphones, teletypes or other similar machines, and except any person regularly employed by a said agent of or dealer in which said agent of or dealer in has paid the privilege tax or license tax herein provided for, the following annual privilege tax shall be levied and collected: in counties of over 100,000 inhabitants, $30; in counties of over 60,000 inhabitants and not exceeding 100,000 inhabitants, $20; in counties of over 40,000 inhabitants and not exceeding 60,000 inhabitants, $15; and in counties of 40,000 inhabitants and less, $10. Such license shall not authorize such agent or dealer to do business in any other county than that in which the license is issued, but if such agent or dealer shall do business in any other county than that in which he has secured the license above provided, he shall pay an additional license in each such county where he solic-

its business of one fourth of the above enumerated amounts. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 554.)

§ 40-12-128. Mining of iron ore — Levy and amount of tax; limitation of actions.

Every person engaged in the business of mining iron ore or operating an iron ore mine in the State of Alabama shall pay to the State of Alabama a license or privilege tax by the twentieth of each month for the privilege of operating said iron ore mine during the current month in which such payment is due an amount equal to $.03 per ton, of 2,240 pounds, on all iron ore mined during the last preceding month in which said mine was operated according to the run of the mine, whether such mine is an open mine or an underground mine, but no such tax shall be paid to any county in this state. Railroad weights shall govern where said iron ore is loaded on railroad cars in determining the amount of iron ore mined. In order that the industrial development of the state may be best preserved and promoted and in order that any deleterious effect of the tax levied in this section may be minimized, the Department of Revenue is authorized and empowered to lower, with the approval of the Governor, as in its knowledge of prevailing conditions may, from time to time prove expedient and advisable for the best welfare of the state, but not to raise, the rate on which the tax is computed. Any action by the state for the recovery of the tax levied under this section shall be commenced, or the assessment therefor made, within 12 months from the shipment by any means of such iron ore from the mine. Unless commenced within such period, the same shall be forever barred. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 556; Acts 1943, No. 525, p. 491.)

§ 40-12-129. Mining of iron ore — Report of operators.

Every person, partnership, joint stock company, or association engaged in the business of mining iron ore or coal in this state shall, by the twentieth day of each month, make a report, duly sworn to before some officer authorized to administer oaths, to the Department of Revenue of the number of tons of iron ore or coal mined during the preceding month according to the run of the mine and where mined by such person in this state. Every person engaged in operating or assisting to operate in any capacity whatsoever any coal or iron ore mine in this state, upon the output of which a report has not been made as provided herein upon which the license or privilege tax has not been paid and is past due, shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than $10 nor more than $500, and may also be sentenced to hard labor for the county for not more than six months. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 557.)

§ 40-12-130. Mining of iron ore — Report of persons receiving products.

Every person or corporation receiving coal or iron ore from any mine in this state for transportation or use shall render to the Department of Revenue by the twentieth day of each month a statement in writing, duly sworn to by some person having knowledge of the facts before some officer authorized by law to administer oaths, of the number of tons so received during the preceding month. Every person receiving coal or iron ore from any mine in this state and transporting the same in motor trucks shall, in addition to the above requirements, show to whom and where each ton of coal or iron ore was delivered. Every person or corporation receiving coal or iron

ore from any mine in this state for transportation or use, who shall fail by the twentieth day of the succeeding month to render the statement required herein, shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than $10 nor more than $500. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 558.)

§ 40-12-131. Monuments and tombstones.

Each person who sells or erects monuments or tombstones in the state shall pay an annual license tax of $5 for each county in which he sells or erects such monument or tombstone; provided, that this shall not apply to benevolent and fraternal societies that place monuments at the graves of their members. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 559.)

§ 40-12-132. Moving picture shows — Transient operators.

Every person operating what is known as a transient moving picture show to which an admission is charged, in tents or otherwise, shall pay a license tax of $50 for the first week and $25 per week for each additional week or portion thereof for each place where a performance is held, and this license tax shall be payable $50 in advance of opening for exhibition and $25 in advance, each week, thereafter. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 560.)

§ 40-12-133. Moving picture shows — Permanent operators.

Every person engaging or continuing in the business of operating a moving picture show, or show of like character, to which admission is charged shall pay the following license tax: in cities of 35,000 inhabitants and over, $200; in cities and towns of less than 35,000 and not less than

7,000 inhabitants, $50; in all other places, $15; provided that, in cities of 35,000 inhabitants or over in which the theater is one mile or more from the city hall, the license shall be $60 per annum. Moving picture shows under this section shall be held to mean a show, the principal featuring of which is moving pictures and for which is required an annual privilege license in Alabama and shall be conducted within a building arranged or constructed for such purpose, and no additional license shall be required if other features of entertainment, including vaudeville acts, are given during any period for which an admission is charged. Any motion picture theater charging children under 12 years of age more than one half of the admission charged adults shall pay double the amount herein levied under this section; provided, that this shall not apply where admission charged such children does not exceed $.10. (Acts 1935, No. 429, p. 901; Code 1940, T. 51, § 561.)

§ 40-12-134. Newsstands.

Each person operating a newsstand for the sale of magazines or periodicals shall pay an annual license tax of $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 563.)

§ 40-12-135. Oculists, optometrists and opticians.

Each oculist, optometrist or optician practicing his profession shall pay the following license tax: in cities or towns of over 5,000 inhabitants, $25; in cities and towns of 1,000 to 5,000 inhabitants, $10; and all other places, whether incorporated or not, $5, but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person is engaged, each oculist, optometrist or optician so engaged shall pay the license as above stated; provided, that

the license imposed by this section shall not apply until such oculist, optometrist or optician shall have practiced his profession as long as two years. A licensee having procured a license in the city or town where he has his principal office may practice his profession in any other place without the payment of an additional license. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 218, p. 259; Code 1940, T. 51, § 564.)

§ 40-12-136. Osteopaths and chiropractors.

Each osteopath or chiropractor practicing his profession shall pay an annual license tax of $20 to the state, but no license shall be paid to the county. If such business is conducted as a firm or corporation in which more than one person is engaged, each osteopath or chiropractor so engaged shall pay a license tax of $20. No osteopath or chiropractor shall be required to pay a license until after he has practiced his profession for two years. Of the license fee prescribed herein for chiropractors, but not for osteopaths, one fourth of the amount collected shall be paid into the state general fund and three fourths of the amount collected shall be paid into the state treasury to the credit of the State Board of Chiropractic Examiners. That portion paid into the credit of the State Board of Chiropractic Examiners shall be used by the board for the purposes stipulated in Section 34-24-143. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 565; Acts 1965, 3rd Ex. Sess., No. 39, p. 255.)

§ 40-12-137. Packinghouses, cold storage plants, etc.

Each cold storage plant, packinghouse or refrigerated warehouse used for storage for hire of any food product shall pay a license fee according to the following schedule based on cubic feet of refrigerated space: less than 25,000 cubic feet, $15; 25,000 and not over 50,000 cubic

feet, $20; 50,000 and not over 100,000 cubic feet, $25; 100,000 and not over 200,000 cubic feet, $50; 200,000 cubic feet and over, $100. Operators of refrigerating pipeline for the purpose of refrigerating rooms, premises, goods, wares or merchandise of others for profit shall pay a license tax of $75. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 566; Acts 1955, No. 81, p. 317.)

§ 40-12-138. Pawnbrokers.

Each pawnbroker shall pay a license tax of $250 for each place of business; but, if such pawnbroker sells pistols or sawed-off shotguns or revolvers, however acquired, he shall pay the additional license tax required for dealers in pistols or sawed-off guns or revolvers by this title. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 567.)

§ 40-12-139. Peddlers and itinerant vendors.

(a) Every itinerant vendor or peddler who shall sell or offer for sale any drugs, ointments or medical preparations intended for treatment of any disease or injury, who shall by speech, writing or printing or any other method profess to treat or cure diseases, injury or deformity by any drug, nostrum or medical preparation shall pay an annual license tax of $250 to the state and $125 in each county where he does business, but the license taken out under this section will not be so construed as to authorize the licensee to practice medicine or treat persons for diseases; provided, that the foregoing shall not be construed to apply to the sale of patent or proprietary medicines or household remedies in original or unbroken packages upon which are written or printed directions for use.

(b) Each itinerant vendor or peddler of spices, flavoring, extracts, toilet articles, soaps, insecticides, stock and poultry supplies, proprietary medicines and house-

hold remedies in original packages and other packaged articles of like kind commonly used on the farm and in the home, who uses a motor vehicle solely for the purpose of transporting merchandise from house to house or place to place, who does not use such vehicle for the display of merchandise or as a rolling store and who does not permit purchasers or prospective purchasers to enter said vehicle for the purpose of inspecting or purchasing merchandise shall pay an annual license tax of $7.50 to the state and $7.50 to each county in which he does business; provided, that those who use a vehicle as herein provided, other than a motor vehicle, shall pay an annual license tax of $20 to the state and $10 to each county in which they do business, and those who operate without a vehicle of any kind shall pay an annual license tax of $10 to the state and $10 to each county in which they do business.

(c) Upon the payment of the license fees provided in subsection (b) of this section, the licensee shall be required to pay no other state or county license tax for the privilege of carrying on the business described in said subsection. (Acts 1935, No. 194, p. 256; Acts 1936, Ex. Sess., No. 43, p. 26; Code 1940, T. 51, § 568; Acts 1961, No. 721, p. 1030.)

§ 40-12-140. Photographers and photograph galleries.

Every photograph gallery or person engaged in photography, when the business is conducted at a fixed location, shall pay the following license tax: in cities and towns of 75,000 inhabitants and over, $25 for each fixed location; in cities and towns of less than 75,000 and not less than 40,000 inhabitants, $15 for each fixed location; in cities and towns of less than 40,000 and not less than 7,000 inhabitants, $10 for each fixed location; in cities and towns of less than 7,000 and in all other places whether incorporated or not, $5 for each fixed location.

The payment of such license tax shall authorize the doing of business only in and throughout the county where paid. If the licensee does business in any other county or counties, he shall pay an annual license tax of $5 for each photographer in each additional county in which he does business. Each transient or each traveling photographer having no fixed place of business in the state shall pay a license tax of $10 per annum in each county where he does business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 569; Acts 1967, No. 213, p. 577.)

§ 40-12-141. Pianos, organs and other musical instruments.

Each person engaged in the business of selling, renting or delivering pianos, organs, small musical instruments or all such articles in this state, either in person or by agent, consignee or broker, shall pay $50 as a license tax to the state for each county in which he has an established place of business, and such license shall permit him to solicit business anywhere in the state; provided, that where such dealer does not have an established place of business in the state but merely sells or solicits the sale of such articles, he shall pay as a state license tax $25 in each county. The provisions of this section shall not apply to general merchants selling as a part of their stock in trade small musical instruments, the selling price of which does not exceed $10; provided, that the license tax on general merchants selling small musical instruments, the selling price of which exceeds $10, but who do not sell pianos or organs, shall be as follows: in counties having a population of 35,000 inhabitants or less, $5; in counties having a population of over 35,000 inhabitants and not exceeding 50,000 inhabitants, $10; in counties having a population of over 50,000 inhabitants and not exceeding 100,000 inhabitants, $15; and in counties having a population of over 100,000 inhabitants, $20.

This shall not be construed to entitle a licensee to maintain branch establishments or stores without payment of the regular license tax of each branch or store, both state and county, required under this section. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 570.)

§ 40-12-142. Pig iron storage operators.

Any person operating yards or enclosures for the purpose of storing pig iron therein and selling warrants thereon or receipts therefor, for each yard or enclosure, shall pay a license tax of $50. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 571.)

§ 40-12-143. Pistols, revolvers, bowie and dirk knives, etc.

Persons dealing in pistols, revolvers, maxim silencers, bowie knives, dirk knives, brass knucks or knucks of like kind, whether principal stock in trade or not shall pay the following license tax: in cities and towns of 35,000 inhabitants and over, $150; and in all other places, $100. All persons dealing in pistols, revolvers and maxim silencers shall be required to keep a permanent record of the sale of every pistol, revolver or maxim silencer, showing the date of sale, serial number or other identification marks, manufacturer's name, caliber and type, and also the name and address of the purchaser, which record shall always be open for inspection by any peace officer of the State of Alabama or any municipality thereof. The failure to keep such record shall subject such person to having his license revoked by the probate judge of the county where such license was issued on motion of any district attorney of the State of Alabama. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 572.)

§ 40-12-144. Playing cards.

In addition to all other taxes of every kind now imposed by law and which are not specifically repealed by this section, every person, firm, corporation, club or association within the State of Alabama which sells or stores or uses or otherwise consumes packages of playing cards containing not more than 54 cards to the deck or package shall pay to the State of Alabama for state purposes only a license or privilege tax of $.10 per package or deck, such tax to be evidenced by revenue stamps, and the stamps in all cases to be affixed to the individual package. The stamps shall be affixed in such manner that their removal will require continued application of water or steam. All taxable playing cards found in the possession of any person, firm, corporation, club or association without having stamps affixed in the manner set out in this section shall be subject to confiscation in the manner provided for contraband goods as set out in Chapter 25 of this title. The administration, collection and enforcement of this law shall be subject to the provisions of Chapter 25 of this title. In addition to the above tax, each retail dealer shall pay for the privilege of selling playing cards an annual license tax of $2. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 573; Acts 1951, No. 978, p. 1653.)

§ 40-12-145. Plumbers, steam fitters, tin shop operators, etc.

Each person doing business as a plumber, steam fitter or operator of a tin shop or roofing shop shall pay the following license tax: in towns or cities of 50,000 inhabitants or over, $25; in cities and towns of 10,000 inhabitants and less than 50,000 inhabitants, $15; in cities and towns of less than 10,000 inhabitants, $10; and in all

other places, whether incorporated or not, $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 574.)

§ 40-12-146. Pool tables.

For each pool table upon which the game of pin pool, bottle pool or starboard pool, or other like device is played, there shall be paid a license tax of $100. For each table upon which the game of pool or billiards is played with 15 balls or more or less, and not pin pool, there shall be paid a license tax of $25. The provisions of this section shall not apply to pool or billiard tables operated or owned by private individuals and used in their homes or pool or billiard tables operated or owned by private clubs, social clubs, or Y. M. C. A.'s when no charge is made for playing thereon. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 575.)

§ 40-12-147. Racetracks, athletic fields, etc.

Each owner or lessee of an athletic field, racetrack or place where races of any kind are held, or where admission fees charged are in excess of $.50, shall pay the following license taxes: in cities or towns of less than 10,000 inhabitants, or within five miles thereof, $10; in cities or towns of 10,000 and less than 25,000 inhabitants, or within five miles thereof, $25; in cities of 25,000 inhabitants and less than 50,000 inhabitants, or within five miles thereof, $50; and in cities of 50,000 inhabitants or more, or within five miles thereof, $100. This section shall not apply to racetracks used exclusively by any county or state fair or athletic fields owned or maintained in good faith by educational institutions located in this state. The provisions of this title permitting the payment of a half-year license tax after April 1 shall not apply to this section. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 577.)

§ 40-12-148. Radios.

Every person engaged in the business of selling radios or other receiving or transmitting machines shall pay the following annual privilege tax: in cities of over 50,000 inhabitants, $25; in cities of over 15,000 inhabitants and not exceeding 50,000 inhabitants, $15; in cities and towns of over 5,000 inhabitants and not exceeding 15,000 inhabitants, $10; in cities or towns of over 1,000 inhabitants and not exceeding 5,000 inhabitants, $5; and in all other places, whether incorporated or not, $3. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 578.)

§ 40-12-149. Real estate brokers and agents — Realty situated within state.

Each person engaged in buying, selling or renting real estate on commission, when such real estate is situated in this state, shall pay to the state the following license tax: in cities and towns of 10,000 inhabitants and over, $15; in cities and towns of less than 10,000 and more than 5,000 inhabitants, $10; and in all other places, $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 580.)

§ 40-12-150. Real estate brokers and agents — Realty situated without the state.

Every person who shall sell or who shall offer to sell in this state any lots or land situated in another state, or who offers to sell at auction or advertises any auction sale of town lots, or the sale by auction or otherwise, or lots in any subdivision of lands situated in another state shall pay an annual license tax to the state of $500. Before any license shall be issued under this section, the party desiring to obtain such license shall cause to be recorded at his own expense on the deed records in the office of the probate judge of the county in which the license is applied for a full description of the lands or lots so offered

for sale, together with the location of same and, if the lands have been divided into lots shall, at his own expense, file a map of said subdivision, which shall be recorded upon the plat book of the county in the office of the judge of probate, and reference to said plat book shall be made on the deed records and noted in the general direct and reverse index of said county. The applicant shall also file and cause to be recorded at his own expense, in the office of the probate judge, evidence of the ownership of the vendor of said lands or lots, the character and extent of such ownership, together with a statement of any and all mortgages or other liens which may exist thereon. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 581.)

§ 40-12-151. Restaurants, cafes, cafeterias, etc.

Each restaurant, cafe, cafeteria, lunch counter or public eating house where meals, food or refreshments are furnished or served and charged for shall pay the following license taxes:

(1) In cities of over 40,000 inhabitants: where the seating capacity does not exceed 10 people, $10; where the seating capacity is over 10 people and does not exceed 20 people, $15; where the seating capacity is over 20 people and not exceeding 35, $30; where the seating capacity is over 35 people, $50.

(2) In cities of 15,000 and not over 40,000 inhabitants: where the seating capacity does not exceed 10 people, $7.50; where the seating capacity is over 10 people and does not exceed 20 people, $12.50; where the seating capacity is over 20 people and not exceeding 35, $25; where the seating capacity is over 35 people, $35.

(3) In cities or towns of over 5,000 and less than 15,000 inhabitants: where the seating capacity

does not exceed 10 people, $5; where the seating capacity is over 10 people and does not exceed 20 people, $10; where the seating capacity is over 20 people and not exceeding 35, $15; where the seating capacity is over 35 people, $25.

(4) In all other places of 5,000 inhabitants and under, whether incorporated or not: where the seating capacity does not exceed 10 people, $5; where the seating capacity is over 10 people and does not exceed 20 people, $7.50; where the seating capacity is over 20 people and not exceeding 35, $10; where the seating capacity is over 35 people, $15.

Seating capacity shall be computed as of October 1; provided, that if a restaurant, cafe, cafeteria, lunch counter or other public eating house should increase its seating capacity after paying the license tax as above provided before January 1, next, it shall be liable for additional tax based on the above schedule; should the seating capacity be increased after January 1 and before April 1, it shall be liable for an additional tax based on the acquired number of seats, but shall be taxed only for three fourths of the additional tax; should the seating capacity be increased after April 1, it shall be liable for one half of the additional tax based on the then acquired seating capacity. The foregoing schedule shall not apply to regular druggists or operators of ice cream parlors paying a soda fountain license and who serve sandwiches, but do not serve meals or lunches, nor to employers operating on their own premises nonprofit restaurants or lunchrooms for the service of meals and lunches to their employees. Hotels operating two restaurants or dining rooms, in connection with the hotel and under the same ownership or management, shall compute their seating capacity on the combined seats of both restaurants or dining rooms and shall be required to secure only one

license. The provisions hereof shall not apply to restaurants, cafes, cafeterias or lunch counters operated in connection with, by or as a part of any school, college or university. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 582.)

§ 40-12-152. Roadhouses, nightclubs, etc.

Every place commonly known as a roadhouse, nightclub, public dance hall or place by any other name where the general public is permitted to dance, whether or not a charge is made therefor, within incorporated cities or towns or within the police jurisdiction thereof, shall pay a license tax of $25; and in all other places $50. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 583.)

§ 40-12-153. Sandwich shops, barbecue stands, etc.

Each sandwich shop, barbecue stand or pit, hamburger or hot dog stand shall pay an annual license tax of $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 584.)

§ 40-12-154. Sawmills, heading mills or stave mills.

Each person, firm or corporation engaged in operating a sawmill, heading mill or stave mill shall pay a privilege tax according to capacity as follows: those having a capacity of 5,000 feet or less per day, $10; those having a capacity of more than 5,000 and not exceeding 10,000 feet per day, $25; those having a capacity of more than 10,000 and not exceeding 25,000 feet per day, $50; those having a capacity of more than 25,000 feet and not exceeding 50,000 feet per day, $100; those having a capacity of more than 50,000 feet per day and not over 100,000, $200; those having a capacity of 100,000 and not over 150,000, $300; those having a capacity of more than 150,000 and not more than 200,000, $400; and those hav-

ing a capacity of more than 200,000 feet, $500. Only one state license shall be paid by the operator or owner of any sawmill. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 585; Acts 1945, No. 311, p. 503.)

§ 40-12-155. Scientists, naturopaths and chiropodists.

Each scientist, naturopath or chiropodist practicing his profession shall pay an annual license tax of $10 to the state, but no license tax shall be paid to the county. If such business is conducted as a firm or corporation in which more than one person is engaged, each scientist, naturopath or chiropodist so engaged shall pay a license tax of $10; provided further, that no scientist, naturopath or chiropodist shall be required to pay a license tax until after he has practiced his profession for two years. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 586.)

§ 40-12-156.Sewing machines.

Each person selling or delivering sewing machines, either in person or through agents, shall pay $25 annually to the state for each county in which he may sell or deliver sewing machines. For each motor vehicle used in delivering or displaying the same, an additional license shall be paid to the state of $10; provided, that a merchant carrying sewing machines as a part of his stock in trade and whose principal business is not selling sewing machines shall not be required to pay this license. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 587.)

§ 40-12-157.Shooting galleries.

Each person operating a shooting gallery shall pay an annual license tax of $20, but such license may be taken out for one month, in which case the license tax shall be $5 per month. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 588.)

§ 40-12-158. Shotguns, rifles, ammunition, etc.

(a) Each person dealing in shotguns, rifles of .22 calibre or over, metallic ammunition or shotgun shells shall pay a license tax of $25 in cities of 100,000 inhabitants or over; $10 in cities or towns of 7,000 and less than 100,000 inhabitants; and $3 in all other places, whether incorporated or not.

(b) Regularly licensed rolling stores selling any or all of the articles enumerated in this section shall, in addition to the license provided in Section 40-12-174, pay a license tax of $5 to the state and $5 to the county in each county in which they sell or offer such articles for sale. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 214, p. 248; Code 1940, T. 51, § 589; Acts 1943, No. 474, p. 438.)

§ 40-12-159. Skating rinks.

Each skating rink operator shall pay an annual state license tax of $25 and a county license tax of $5 for every county in which same is operated or conducted. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 590.)

§ 40-12-160. Soliciting brokers.

Any person engaged in the management of business matters occurring between the owners of vessels, railroads, airplanes, motor vehicles and express companies and the shippers or consignors of the freight and the passengers which they carry shall be deemed a "soliciting broker" for the purpose of this section. Every such person shall pay, for the privilege of transacting such business, $50. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 593.)

§ 40-12-161. Spectacles or eyeglasses.

Each person selling spectacles or eyeglasses, other than nonprescription sunglasses, shall pay the following license tax: in cities or towns of 50,000 inhabitants and over, $25; in cities or towns of 15,000 inhabitants and less than 50,000 inhabitants, $15; in cities and towns of over 5,000 inhabitants and less than 15,000 inhabitants, $10; and in all other places, whether incorporated or not, $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 594.)

§ 40-12-162. Stock and bond brokers.

Each person dealing in stocks and bonds shall pay a license tax of $50. The payment of the license tax required by this section shall authorize the doing of business in the town, city or county where paid. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 596.)

§ 40-12-163. Street fairs and carnivals.

Each person operating or conducting an exhibition termed a "street fair" or "carnival" shall pay to the state a license tax as follows: for an exhibition operating or composed of or controlling or embracing not more than 10 exhibits, devices or concessions, $50; but where more than 10 and not exceeding 20 exhibits, devices or concessions, $75; and where more than 20 and not exceeding 35, $100; and where more than 35 exhibits, devices or concessions, $150. This license shall entitle the street fair or carnival to be operated for a period of not exceeding two weeks in any one place at any one time. For the purpose of this section, a "street fair" or "carnival" shall mean a combination of exhibitions, also called sideshows, rides, games of chance, tests of skill or strength, concessions and any other devices generally associated with a "street fair" or "carnival," regardless of ownership, when operated as a combination or a group, and regardless of whether or not an admission is charged to the midway or grounds. A licensee under this section shall not be required to purchase licenses under the provisions of Sections 40-12-69, 40-12-95, 40-12-103, 40-12-140, 40-12-153 and 40-12-157. (Acts 1935, No. 194, p. 256; Acts 1939, No. 391, p. 515; Code 1940, T. 51, § 597; Acts 1967, No. 422, p. 1088.)

§ 40-12-164. Supply cars.

The owner, conductor or person in charge of every supply car or cars from which any goods, wares or merchandise are sold, whether to servants of the railroad company or to others, must pay a license tax of $100; and the person so licensed shall thereby be entitled to carry on such business in the car therein named in any county in which such car is run or drawn; upon payment of an additional license tax of $5 in each county where goods are sold. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 598.)

§ 40-12-165. Syrup and sugar factories.

Each person operating or conducting a factory, plant or refinery where syrup or sugar is made, manufactured or refined shall pay a license tax based on the capital invested in plant, equipment, finished materials and raw materials, as follows: where the capital so invested is over $100,000, $100; where the capital so invested is over $75,000 and not exceeding $100,000, $75; where the capital so invested is over $50,000 and not exceeding $75,000, $50; where the capital so invested is over $25,000 and not exceeding $50,000, $40; where the capital so invested is over $10,000 and not exceeding $25,000, $25; where the capital so invested is over $5,000 and not exceeding $10,000, $15; where the capital so invested is over $2,000 and not exceeding $5,000, $10;

and where the capital so invested is over $1,000 and not exceeding $2,000, $5. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 599.)

§ 40-12-166. Theaters, vaudeville and variety shows.

Each person engaged in conducting a theater, vaudeville or variety show and each person conducting any other exhibition, show, entertainment or performance to which an admission is charged and not in this chapter otherwise licensed shall pay an annual license tax for each place of business as follows: in towns and cities of 3,000 inhabitants or less and in unincorporated places, $5; in cities of more than 3,000 and less than 7,000 inhabitants, $10; in cities of 7,000 and less than 20,000 inhabitants, $20; in cities of 20,000 and less than 30,000 inhabitants, $25; and in cities of 30,000 inhabitants or more, $35. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 601.)

§ 40-12-167. Ticket scalpers.

Any person offering for sale or selling tickets at a price greater than the original price and who is commonly known as a ticket scalper shall pay a license tax of $100. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 602.)

§ 40-12-168. Tourist camps.

Each person operating a public tourist camp where transient guests are lodged for pay shall be deemed for the purpose of this section engaged in the business of keeping or operating a tourist camp and shall pay the following license or privilege tax: each camp containing not over five beds, $15; each camp containing over five and not exceeding 15 beds, $25; each camp containing over 15 beds, $35 and $1 for each additional bed over 15. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 604.)

§ 40-12-169. Tractors, road machinery and trailers.

Each person, other than a licensee under Section 40-12-51, for engaging in the business of dealing in tractors, road machinery or trailers, shall pay the following license tax: in cities and towns of 50,000 inhabitants or over, state license of $50, county license of $40; in cities and towns of 25,000 and less than 50,000 inhabitants, state license of $35, county license of $35; in cities and towns of 5,000 and less than 25,000 inhabitants, state license of $20, county license of $20; and in all other places of less than 5,000 inhabitants, whether incorporated or not, state license of $10, county license of $10. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 156, p. 178; Code 1940, T. 51, § 605; Acts 1947, No. 133, p. 42.)

§ 40-12-170. Trading stamps.

Every person who engages in or carries on the business of issuing or selling to merchants trading stamps, or any device or substitute thereof, or any stamps or certificates of like character which are to be given by merchants to purchasers of goods, wares or merchandise and which said stamps, certificates or devices, or substitutes therefor the person issuing or selling the same agrees to accept in payment for goods, wares, and merchandise kept on hand by himself or another for redemption or for distribution by the person issuing or selling such stamps or certificates, shall pay to the State of Alabama a privilege or license tax of $500 per annum, such funds to go to the State of Alabama exclusively and, in lieu of any and all other county licenses, the sum of $250 to each county, for each place of business, per annum. The provisions of this section shall not apply to any coupon, ticket, certificate, card or other similar device issued or distributed by a manufacturer or packer which is redeemable for any goods, wares or merchandise by the manufacturer or

packer or its agents or independent contractor acting for redemption. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 606; Acts 1955, No. 399, p. 938; Acts 1969, No. 1157, p. 2162.)

§ 40-12-171. Transfer of freight.

Each person transferring freight, not including household goods, using more than one vehicle for hire in cities or towns or in the police jurisdiction thereof shall pay a license tax of $10 for each vehicle in excess of one. This section shall not apply to vehicles owned by motor carriers coming within the provisions of Sections 37-3-1 through 37-3-34 and 40-19-1 through 40-19-17 nor shall it apply to vehicles owned by any railroad company or express company. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 607; Acts 1949, No. 606, p. 938.)

§ 40-12-172. Transient dealers.

Each person doing business as a transient dealer as defined in this section and who does not pay the privilege license under Section 40-12-73 or the license permit under Section 40-25-19 shall pay an annual license tax to the state of $30 The payment of one state license shall authorize such transient dealer to engage in such business in any county in the state upon the payment of a county license of $5 in each such county.

When used in this section, the words "transient dealer" shall be held to include any person or persons who shall be embraced in any of the following classifications: all persons acting for themselves or as an agent, employee, salesman or in any capacity for another, whether as owner, bailee or other custodian of goods, wares and merchandise and going from person to person, dealer to dealer, house to house or place to place and selling or offering to sell, exchanging or offering to exchange, for

resale by a retailer, any goods, wares and merchandise, or all persons who do not keep a regular place of business open at all times in regular business hours and at the same place, who shall sell or offer for sale goods, wares and merchandise, or all persons who keep a regular place of business open during regular business hours and at the same place, who shall elsewhere than at such regular place of business sell or offer for sale or at the time of such sale deliver goods, wares or merchandise, or all persons who go from person to person, house to house, place to place or dealer to dealer and sell or offer for sale or exchange the goods, wares and merchandise which they carry with them, and who deliver the same at the time of, or immediately after the sale, or without returning to the place of business operations (a permanent place of business) between the taking of the order and the delivery of the goods, wares and merchandise, or all persons who go from person to person, house to house, place to place or dealer to dealer soliciting orders by exhibiting samples or taking orders, and thereafter making delivery of the goods or filling the order without carrying or sending the order to the permanent place of business and thereafter making delivery of the goods pursuant to the terms of the order, or all persons who go from person to person, place to place, house to house or dealer to dealer carrying samples and selling goods from samples and afterwards making delivery without taking or sending an order therefor to a permanent place of business for the filling of the order and delivery of the goods, or the exchange of the goods, or the exchange of merchandise having become damaged or unsalable, or the purchase by merchants of advertising space, or all persons who have in their possession or under their control any tangible property offered or to be offered for sale, or to be delivered, unless the sale or delivery thereof is to be made in pursuance of a bona fide order for the goods to

be sold or delivered, said order to be evidenced by an invoice or memorandum.

An order is defined as being an agreement in writing between the seller to deliver and the buyer to accept the merchandise to be sold, bought and delivered at the prices and in the quantities agreed upon; and said order shall be evidenced by a memorandum or invoice accompanying the goods on the day on which the same are to be delivered, specifically designating and specifying the name and address of the seller and the buyer, the items purchased, sold and to be delivered and the price on each and the aggregate thereof. The agreement to buy or accept for delivery must be entered into before the goods are placed in transit or delivered and must be transmitted from the place at which taken to the regular and fixed place of business before being filled and the goods delivered. A commonly termed "blanket order" shall not satisfy the conditions of this definition when such "blanket order" is merely an agreement between the buyer and seller, whereby the buyer shall take such quantity of goods as the seller may deliver to his place of business, or to any other place, within a certain period of time. A "blanket order" to satisfy the conditions of this definition must be an agreement in writing and must recite that the buyer agrees to accept from the seller definite quantities of goods at agreed prices or at prevailing market prices at the time of the delivery of the same; and such agreement shall not be subject to change or cancellation before its termination, without damages to either of the parties entering into it, and it shall not be a condition of such agreement that goods, delivered in accordance therewith must be paid for on delivery.

This section shall not apply to transient dealers of bakery products in the county where such bakery is located; nor shall this section apply to transient dealers of bottled soft drinks when sold or distributed from a bot-

tling plant which has paid the privilege tax imposed by Section 40-12-65; nor shall it apply to transient dealers in the sale or delivery of gasoline, kerosene, lubricating oil or other petroleum products when drawn, conveyed and distributed from a stock maintained at a warehouse, oil depot, distributing station or established place of business in this state upon which has been paid all the privilege taxes required of such business; provided that transient dealers of bakery products engaging in the business of transient dealer in any other county shall pay the state an annual state license tax of $20 and, in addition thereto, $5 to each county in which such transient dealer does business as such. This section shall not apply to a person or to any member of his immediate household selling dairy, poultry or farm products raised, produced or grown by him nor to such products preserved, bottled or canned by him. Nor shall this section apply to those selling fish, shrimp, crabs or other seafoods, candy and peanuts.

No part of this section shall be construed so as to impose any tax or require any duty of traveling salesmen representing jobbers or wholesalers and who do not carry with them goods for sale, but only take orders for goods and deliver said orders to their employer at a store or permanent place of business, to be filled in the manner used by the jobbing and wholesale trade.

The payment of the privilege license tax required by this section shall not authorize any transient dealer to sell any goods, wares or merchandise for which a higher license is required without the payment of the higher license.

Any person paying the license tax herein levied shall not sell any goods, wares or merchandise for use or consumption by going from person to person, dealer to dealer, house to house or place to place without the pay-

ment of a peddler's license as required by Section 40-12-174.

The taxes herein levied are not subject to any specific exemption. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 609.)

§ 40-12-173. Transient theatrical and vaudeville shows.

Each person operating or conducting vaudeville or theatrical shows as transient, operating temporarily in different places in tents or otherwise, shall pay to the state a license tax of $25 per week for such show. A separate license shall betaken out for each week of operation. No county in collecting said license for said county shall charge a license, except for the number of days said shows operate in said county, and that license shall be in proportion that the days shown in said county bears to the weekly license. This section shall not apply to any show operating in a theater regularly licensed. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 610.)

§ 40-12-174. Transient vendors and peddlers.

(a) Each person travelling on an animal or using a vehicle other than a motor vehicle, doing business as a transient vendor or peddler as defined in this section, displaying, selling or offering to sell any goods, wares or merchandise, other than to a merchant for resale, shall pay a privilege license tax to the State of Alabama of $15 and $5 for the county in each county in which such transient vendor or peddler does business for each vehicle.

(b) Each itinerant vendor or peddler of merchandise, other than tobacco products, medicines or household remedies or liquefied petroleum products, but including persons, firms, corporations, partnerships or cooperatives whose principal business is selling and distributing milk and dairy products, who operates on foot or

uses a vehicle solely for the purpose of transporting merchandise from house to house or place to place but who does not use such vehicle for the display of merchandise or as a rolling store and who does not permit purchasers to enter said vehicle for the purpose of purchasing merchandise shall pay an annual license tax of $20 to the state and $10 to the county in each county in which he does business; and the payment of one state license shall authorize such persons, firms, corporations, partnerships or cooperatives to engage in such business in any county in the state upon the payment of a county license of $10 to each county in which said persons, firms, corporations, partnerships or cooperatives do business.

(c) Each person using a motor vehicle, doing business as a transient vendor or peddler as defined in this section displaying, selling or offering to sell any goods, wares or merchandise of whatever nature at retail shall pay to the state in order to engage in such business the following license taxes: upon one motor vehicle, the annual license for each such motor vehicle, not in excess of one so used, shall be $100; upon two motor vehicles or more, but not to exceed three, the annual license fee for each such additional motor vehicle shall be $130; upon more than three motor vehicles, but not to exceed six, the annual license fee for each such additional motor vehicle shall be $150; upon each motor vehicle in excess of six, for each such additional motor vehicle, $200. In addition to the above, there is levied a license tax of $50 for the state and a county license tax of $50 in each additional county in which said business is conducted. Rolling stores which are controlled or held with others by stock ownership of 25 percent or ultimately controlled or directed by one management or association of ultimate management shall be deemed for the purpose of this section as being owned by the same person.

(d) Each person going from person to person, place to place, town to town, selling or giving away medicine, salves, ointments, lotions or other goods, wares or merchandise by exhibitions, shows, performances or other entertainment, whether sold for himself or another, in each county where such sales or gifts are made shall pay a license tax of $100.

(e) When used in this section, the words "transient vendor or peddler" shall be held to include any person embraced in any of the following classifications:

(1) All persons commonly and generally termed "peddlers" and falling within the usual and commonly understood definition of "peddler"; or

(2) All persons acting for themselves or as an agent, employee or salesman, or in any capacity for another whether as owner, bailee or other custodian of goods, wares and merchandise, going from person to person, house to house or place to place and selling or offering to sell, or consigning or offering to consign, other than to a retail merchant for resale, goods, wares and merchandise; or

(3) All persons who do not keep a regular place of business open at all times in regular business hours at the same place, going from person to person, house to house, place to place or town to town and selling or offering for sale, other than to a retail merchant, goods, wares and merchandise which they carry with them and who deliver the same at the time of or immediately after the sale; or

(4) All persons who go from person to person, house to house, place to place, soliciting orders, other than from a retail merchant for resale, by exhibiting samples or taking orders and thereafter making delivery of the goods or filling the order, without carrying or sending the order to the permanent place of business.

(f) This section shall not apply to a person or to any member of his immediate household selling or offering to sell dairy, poultry or farm products raised, produced or grown by himself, or the immediate members of his household, or such products preserved, bottled or canned by himself, or the immediate members of his household, or to persons peddling wood, charcoal, fruit or vegetables; or to blind persons or persons physically disabled to the extent of 30 percent, such disability to be certified to by a reputable physician and the local license inspector, operating other than a rolling store, or to peddlers of poultry and eggs, or to persons selling fish, shrimp, crabs or other seafoods. These and none other shall be exempt from the payment of the license tax levied by this section.

(g) The payment of the privilege license tax required by this section shall not authorize any transient vendor or peddler to sell any goods, wares or merchandise for which a higher or specific license is required without the payment of such license in addition to the license herein levied or to sell any goods, wares or merchandise that are by law required to be sold at a fixed location, except upon the payment of the maximum license tax levied under the section or sections of this chapter for the sale of merchandise at a fixed location. This section shall not apply to transient dealers of bottled soft drinks when sold or distributed from a bottling plant which has paid the privilege license tax imposed by Section 40-12-65. (Acts 1935, No. 194, p.256; Acts 1936-37, Ex. Sess., No. 230, p. 277; Code 1940, T. 51, § 611; Acts 1953, No. 208, p. 276; Acts 1961, Ex. Sess., No. 241, p. 2254; Acts 1969, No. 543, p. 1021.)

§ 40-12-175. Turpentine and resin stills.

Each person operating a turpentine still or stills for the purpose of distilling or manufacturing spirits of turpen-

tine or resin shall pay an annual privilege tax as follows: on each such still having a capacity of 16 barrels or less, $20; on each still having a capacity of over 16 barrels and not over 20 barrels, $35; on each still having a capacity of over 20 barrels and not over 25 barrels, $45; and on each still having a capacity of 25 barrels or over, $65. Each owner or operator of a turpentine still shall, between October 1 and November 1 of each year, file with the probate judge of each county in which he does business a sworn statement, showing the number of stills operated by him in such county for any period of the preceding year and the capacity of each still operated, and shall pay the license tax required by the foregoing schedule in each county, which license tax shall be based on such previous year's capacity; provided, that no county license tax shall be paid. Any person who makes or files a false statement as to the number of stills operated or as to the capacity of such still or stills shall be guilty of perjury and, on conviction, shall be punished as in other cases of conviction for perjury as provided by law. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 612.)

§ 40-12-176. Vending machines.

(a) Every person, firm, corporation, association or copartnership operating a vending machine business whereby tangible personal property is sold through or by the use of coin-operated machines shall pay an annual privilege license tax based on the total sales of each such vending company during the preceding year as follows:

Total Sales	Amount of Tax
$12,000.00 or less	$10.00
12,000.01— 24,000.00	20.00
24,000.01— 36,000.00	30.00
36,000.01— 48,000.00	40.00
48,000.01— 60,000.00	60.00
60,000.01— 80,000.00	75.00

80,000.01— 100,000.00	90.00
100,000.01— 150,000.00	125.00
150,000.01— 200,000.00	150.00
200,000.01— 250,000.00	175.00
250,000.01— 350,000.00	200.00
350,000.01— 450,000.00	300.00
450,000.01— 750,000.00	400.00
750,000.01— 1,000,000.00	500.00
1,000,000.01— 2,500,000.00	600.00
2,500,000.01— 5,000,000.00	700.00
5,000,000.01— 7,500,000.00	800.00
7,500,000.01— 10,000,000.00	900.00
10,000,000.01 or more	1000.00

(b) The revenue produced by the license taxes levied in this section shall be divided equally between the state and the several counties in which it is collected. No separate county license shall be required. The several probate judges and license commissioners shall report and remit monthly to the state treasurer all moneys collected for the use of the state, and to the counties all moneys collected for the counties. The payment of such occupational license tax as herein provided for in one county in the state shall be sufficient, and the vending machine company shall conspicuously post, on each machine operated by him under such license, his name and address.

(c) Hotels, motels, tourist camps or other places of business having less than five coin-operated radios shall pay $8 for each location, establishment or place of business receiving transmitted music by wire or cable; except, that such locations, establishments or places of business having less than five transmitters or speakers, $8 for each such transmitter or speaker in excess of four, $2 each; provided, that where the music transmitted by wire or cable from any central point or studio, whether such point or studio is situated within or without such location, establishment or place of business, is not coin-oper-

ated or where no deposit of a coin or other thing of value into any machine is necessary in order that music may be heard, then each person, firm or corporation engaged in the business of transmitting music by wire or cable may pay in lieu of the speaker or transmitter tax specified above a privilege tax as follows: in counties of 60,000 inhabitants or less, $30; in counties of 60,001 and not exceeding 125,000 inhabitants, $60; in counties of 125,001 inhabitants and over, $80; provided, that one license may be issued to include all coin-operated radios and/or transmitters or speakers located within such hotel, motel, tourist camp location, establishment or other place of business, which license shall be prominently displayed. The licenses herein provided for shall be levied upon the operator of the machine, the coin-operated radio or the central point or studio from which point or studio the music is transmitted; provided, that in the event any unlicensed machine, coin-operated radio, transmitter or speaker is found in any establishment or place of business, the operator of such establishment or place of business shall be the operator of such machine, coin-operated radio, transmitter or speaker and shall be liable for the license therefor.

(d) Nothing in this section shall apply to machines installed by any person, firm or corporation, nor to coin-operated gas meters, nor to coin-operated telephones, nor to a machine vending postage stamps in its place of business or vending necessary articles on a nonprofit basis for emergency use only by the employees of such person, firm or corporation.

(e) No license shall be required under this section where a privilege or dealer's license is required by this chapter for the sale of such article, and such privilege license shall have been obtained by the person, firm or corporation operating the place of business where such machine is located, or the owner of such vending machine shall have secured such privilege license as required herein.

(f) Any person operating or permitting the operation of a vending machine dispensing packages or in quantities less than a package of cigarettes, or any article on which there is an excise tax, the payment of which is evidenced by stamps, without first having paid the tax thereon by affixing the required stamps to the original package as required under Section 40-25-2, shall be guilty of a misdemeanor and punished as provided in such section for failure to pay said tax. Each vending machine vending tobacco products of any kind whatsoever shall have securely affixed thereto in full view the name and address of the legal owner of said machine. When tobacco products are found in such vending machines to be improperly stamped or unstamped, in violation of Section 40-25-2, such vending machine and contents shall be confiscated by any duly authorized agent of the Department of Revenue as provided in Section 40-25-2 for the confiscation of improperly stamped or unstamped tobacco products. Each vending machine vending tobacco products of any kind whatsoever shall have a transparent front window, or windows, through which the Alabama revenue stamps required by Section 40-25-2 may be seen without the necessity of opening or unlocking the vending machine.

(g) For the purpose of any excise or consumption taxes, the payment of which is not evidenced by stamps, levied on any of the articles dispensed through such machine, the person in whose place of business each machine is located shall be considered the consumer of such article and shall be liable for such taxes measured by the regular retail price thereof.

(h) No license shall be required under this section for home-type merchandise vending machines placed in private homes for home use only and not for public use.

(i) Nothing herein contained shall be construed as legalizing or licensing any machine or device which is now illegal or which may hereafter be declared illegal.

(j) All the licenses levied by this section shall bear the business address of the owner or operator thereof.

(k) It is the legislative intent that only the license required under this section shall be required for the operation of a vending machine company under this section within this state for any one license year.

(l) The license shall be purchased in the county in which the home office or principal place of business of the company is located or in operation on October 1 or at the time the license is purchased for the licensing year.

(m) Any person failing to perform any of the duties required of him by the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 and not exceeding $100 for each offense.

(n) In the event that a new business is formed which has not heretofore been in the vending machine business, it shall pay only the minimum license until such time as a new license is required.

(o) Each applicant for any license required herein shall by sworn statement supply the gross sales as required herein, and its books and records shall be available to any taxing authority within this state for inspection to insure compliance with this section.

(p) On all other vending machines whereby tangible personal property is not sold but services or amusements are vended, with the exception that coin-operated pool tables and coin-operated or self-service laundries are specifically excluded herefrom and licensed under other sections, operators shall pay a license as follows: on all machines whereby one cent is used, a fee of $1; on all machines where over one cent is used, a fee of $8. The license is to be paid, collected and distributed as heretofore provided in this section. It is further provided that any fees, penalties, fines or other collections made by the Revenue Department upon owners of coin-operated or self-service laundries prior to the date of this amendatory act shall be returned in full to such owners. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 36, p. 32; Acts 1939, No. 398, p. 519; Code 1940, T. 51, § 613; Acts 1943, No. 207, p. 185; Acts 1947, No. 688, p. 522; Acts 1957, No. 566, p. 785; Acts 1961, No. 867, p. 1358, Acts 1961, Ex. Sess., No. 38, p. 1890; Acts 1963, No. 483, p. 1035; Acts 1965, 2nd Ex. Sess., No. 46, p. 65; Acts 1975, No. 1085; p. 2149; Acts 1983, 3rd Ex. Sess., No. 83-835, p. 55.)

§ 40-12-177. Veneer mills, planing mills, box factories, etc.

Each person, firm or corporation engaged in the operation of a veneer mill, planing mill, box factory, handle factory or any other factory where lumber or timber is sawed or made into a finished or semifinished product, other than a sawmill licensed under Section 40-12-154, shall pay a privilege tax based on the number of men employed or engaged in the manufacture of the products produced by such mills, as follows: where there are five or less men employed or so engaged, $5; where there are more than five men and less than 10 so employed or engaged, $10; where there are 10 men and less than 20 so employed or engaged, $30; where there are 20 men and less than 40 so employed or engaged, $80; and where there are 40 men and over, $120. It is the intention hereof that where a person, firm or corporation shall pay a privilege tax under Section 40-12-154 or under Section 40-12-121, then no privilege license tax shall be charged or collected hereunder. (Acts 1936-37, Ex. Sess., No. 231, p. 279; Code 1940, T. 51, § 614.)

§ 40-12-178. Veterinary surgery.

Each person practicing veterinary surgery shall pay an annual license tax of $5 to the state, but no license tax shall be paid to the county. No veterinary surgeon shall be required to pay a license tax until he has practiced his profession for two years. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 615.)

§ 40-12-179. Warehouses and yards.

Each person operating a warehouse or yard for the storage of goods, wares or merchandise for hire shall pay an annual license tax to the state of $25; where such warehouseman also acts as a distributing agent and forwards and distributes the goods stored in such warehouse and charges for such service, he shall pay an additional license tax of $100. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 616.)

§ 40-12-180. Waste grease and animal by-products.

Each person engaged in the business of purchasing and receiving or collecting waste grease and animal by-products for rendering or recycling, from businesses, schools and institutions located in various cities of the state, shall pay the following annual license tax in cities of:

over 100,000 population	$50.00
25,000 to 100,000 population	25.00
12,000 to 25,000 population	20.00
6,000 to 12,000 population	15.00
2,000 to 6,000 population	10.00
0 to 2,000 population	5.00

(Acts 1991, No. 91-598, p. 1101, § 1.)

CODE OF ALABAMA 1975

TITLE 40
REVENUE AND TAXATION

CHAPTER 16
FINANCIAL INSTITUTION EXCISE TAX

§ 40-16-1. Definitions.

For the purpose of this chapter, the following terms shall have the respective meanings ascribed to them by this section:

(1) FINANCIAL INSTITUTION. Any person, firm, corporation, and any legal entity whatsoever doing business in this state as a national banking association, bank, banking association, trust company, industrial, or other loan company or building and loan association, and such term shall likewise include any other institution or person employing moneyed capital coming into competition with the business of national banks, and shall apply to such person or institution regardless of what business form and whether or not incorporated, whether of issue or not, and by whatsoever authority existing. The common parent corporation of a controlled group of corporations eligible to elect to file a consolidated excise tax return, in accordance with Section 40-16-3, shall be considered a "financial institution" if such parent corporation is a registered bank holding company as defined by the Bank Holding Company Act of 1956, as amended. As a financial institution, the common parent corporation will be governed by Sections 40-16-1 through 40-16-8 and exempt from all income taxes under Sections 40-18-1 through 40-18-85, with the exception that the credit for licenses or taxes as provided by Section 40-16-8 and the regulations issued or promulgated pursuant thereto by the Department of Revenue will not apply to amounts of excise tax on financial institutions imposed hereby and

paid by such parent corporation. "Financial institution" shall not mean or include individual citizens and fiduciaries acting in a representative capacity for individual citizens, not engaged in a banking, loan, investment, or similar business, but merely making personal investments of personal or fiduciary funds in bonds, notes or other evidences of indebtedness and not made in competition with the business of national banks, nor shall such term apply to insurance companies or insurance associations merely making investments of reserves in bonds, notes or other evidences of indebtedness and not made in competition with the business of national banks.

(2) NET INCOME. The net income for the taxable year, as in this title defined, arising from the business the privilege to engage in which is hereby taxed, computed by deducting from the gross income arising from such business, without any exclusions from or credit to such gross income, the total amount of the following deductions:

a. All the ordinary and necessary expenses paid or incurred during the year the income is received which is made the basis of the tax in carrying on the business, the privilege to engage in which is hereby taxed, including a reasonable allowance for salaries or other compensation for personal service actually rendered; also all contributions paid by a financial institution as employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee of any financial institution under the plan deferring the receipt of such compensation, such contributions or compensation shall be deductible, but only to the following extent:

1. In the taxable year when paid, if the contributions are paid into a pension trust and if such taxable year ends within or with a taxable year of

the trust for which the trust is exempt under Section 40-18-25 in an amount determined as follows: (i) An amount not in excess of five percent of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Commissioner of Revenue upon periodical examinations at not less than five year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan, plus (ii) any excess over the amount allowable under clause (i) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Commissioner of Revenue, but if such remaining unfunded cost with respect to any three individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least five taxable years, or (iii) in lieu of the amounts allowable under (i) and (ii) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Commissioner of Revenue plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the

Commissioner of Revenue; except, that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased, (iv) any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

2. In the taxable year when paid, in an amount determined in accordance with subparagraph 1 of this paragraph, if the contributions are paid toward the purchase of retirement annuities and such purchase is a part of a plan which meets the requirements of subsection (e) of Section 40-18-25, and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities.

3. In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under subsection (e) of Section 40-18-25, in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year beginning after the approval of this chapter by the Governor there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding

sentence, the excess or, if no amount is paid, the amounts deductible shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in a taxable year beginning after the approval of this chapter by the Governor in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust," as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in subparagraph 1. If the contributions are made to two or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for the purposes of applying the limitations of this subparagraph.

4. In the taxable year when paid, if the plan is not one included in subparagraphs 1, 2, or 3, if the employees' rights to or derived from such employer's contribution or such compensation

are nonforfeitable at the time the contribution or compensation is paid.

5. For the purposes of subparagraphs 1, 2, and 3, a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made within 60 days after the close of the taxable year of accrual.

6. If amounts are deductible under subparagraphs 1 and 3, or 2 and 3, or 1, 2, and 3, in connection with the two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year, together with the amount allowable under the first sentence of this subparagraph, shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This subparagraph shall not have the effect of reducing the amount otherwise deductible under subparagraphs 1, 2, and 3, if no employee is a beneficiary under more than one trust, or a trust and an annuity plan. If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or

annuity plan, or similar plan deferring the receipt of compensation, this paragraph shall apply as if there were such a plan. Also, all contributions or gifts made by financial institutions to a community chest or to recognized religious, charitable, scientific, or educational institutions or agencies, or to institutions or agencies for the prevention of cruelty to children or animals, which are not operated for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual or contributions or gifts for vocational rehabilitation authorized by the United States Vocational Rehabilitation Act. The amount of such deduction shall not be, however, in excess of five percent of the financial institution's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only where made to a community chest or institution or agency recognized as such for the above purposes under rules and regulations prescribed by the Department of Revenue. Traveling expenses, including a reasonable amount expended for meals and lodgings while away from home in the necessary business of such institutions; rentals or other payments required to be made as the condition to the continued use or possession for the purposes of such business, or property to which the taxpayer has not taken or is not taking title or in which the taxpayer has no equity, provided the amount and the reasonableness of all such expenditures shall be approved by the State Department of Revenue.

b. All interest paid or accrued within the taxable year on the indebtedness of said business. Also, all dividends paid or accrued within the taxable year on the shares of preferred stock held or owned by a recon-

struction finance corporation or any other governmental agency;

c. Taxes actually paid within the year in which the income on which the tax is based was received, except the excise tax imposed by this chapter and taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

d. Losses sustained and determined during the taxable year by the business and not compensated for by insurance or otherwise:

1. The basis for determining the amount of any loss or gain shall be the cost to the financial institution of the asset disposed of less the actual depreciation sustained on physical asset and any reduction charged as an expense upon stocks, bonds or other securities in previous years.

2. No loss shall be allowable unless the property is actually disposed of and the loss thereby determined or an appraisal of the loss is made and allowed under the supervision of the Department of Revenue, except as hereinafter provided.

e. Debts ascertained to be worthless and charged off within the taxable year; provided, that a schedule of such debts shall be filed and the reasons supporting such claim for deduction be filed with the return; provided, further, that bad debts shall not include losses on stocks and bonds or a reduction in the market value of such stocks and bonds except where loss is determined by the sale of such securities; provided, that in the case of any financial institution required by law to be examined by state, federal, or federal reserve bank examiners, such debts can be charged off and to such an amount or extent as required to be charged off by state, federal, or federal reserve bank examiners. Any reduction in the book value of any stocks or bonds

carried on the books of any such financial institution required by any state, federal, or federal reserve bank examiners shall be allowed as proper deductions by the State Department of Revenue. On the sale of any securities, the book value of which has been reduced on the requirement of such examiners, and the reduction so made claimed as a deduction, accomplishing a reduction of the tax paid, any excess of the sale price over said book value of such securities shall be reflected as income and subject to the excise tax levied by this chapter. When in the opinion of state, federal or federal reserve bank examiners a debt is recoverable only in part and when a part of such debt is charged off by requirement of state, federal or federal reserve bank examiners, the Department of Revenue shall allow a deduction in an amount equal to the amount of such charge-off;

f. A reasonable allowance for the exhaustion, wear and tear of property used in the business, including a reasonable allowance for obsolescence. The basis for determining the amount of such depreciation deduction shall be the cost of such property, or, if acquired prior to October 15, 1935, the basis shall be the depreciated cost as of October 1, 1935;

g. The amount received as dividends from a corporation organized and existing under the laws of the State of Alabama and the amount received as dividends in liquidation paid from capital;

h. In the discretion of the Department of Revenue, in lieu of such deductions for losses or bad debts, a reasonable addition to reserves therefor and for extraordinary expenses;

i. In the case of savings and loan associations the amount paid out as dividends on the withdrawable shares thereof;

j. In computing the net income of credit unions for the purpose of the excise tax levied by this chapter, there shall, in addition to all other deductions allowed by law, be deducted the amount paid out as dividends on the withdrawable shares of such credit union; and

k. All financial institutions shall be allowed to carry back their net operating losses to apply as a deduction against prior income, and to deduct from succeeding years' income the excess loss, if any, that is not absorbed thereby. For purposes of this subdivision, the term "net operating loss" means the excess of allowable deductions over gross income. No net operating loss deduction (arising out of a net loss in an earlier or later year) shall be allowed in computing a net operating loss. Casualty losses and losses arising from theft, fraud and embezzlement, however, shall be deductible in computing the net operating loss. A net operating loss for a taxable year ending after the year 1952 may be carried back two years, then forward to the eight succeeding taxable years in chronological order; provided, that no part of the net operating loss which has been previously applied against income for one taxable year may be applied as a carryback or carryover to another taxable year. The net operating loss deduction allowed herein shall be the sum of the carrybacks and carryovers applicable to the taxable years. A successor financial institution shall be allowed to carry over and deduct from succeeding years' income, in the manner prescribed herein, the net operating loss of its predecessor. Refunds under the provisions of this subdivision shall be paid from the current year's receipts

3. TAXABLE YEAR. A full period of 12 consecutive months constituting the fiscal year or calendar year of each financial institution ended last prior to April 1, 1935, and thereafter ended last prior to April 1 of each year in which such tax is to be assessed. In the case of any

business hereby taxed conducted only during a fractional period of any year, a return shall be made as herein provided and the tax computed as herein provided, and such tax as assessed shall be an excise for the privilege of doing business in this state . . . . . for such fractional year.

4. STATE TAX YEAR. The calendar year. (Acts 1935, No. 194, p. 256; Acts 1939, . No. 48, p. 56; Acts 1939, No. 369, p. 496; Code 1940, T. 51, § 425; Acts 1945, No. 130, p. 129; Acts 1945, No. 319, p. 520; Acts 1955, No. 568, p. 1232; Acts 1957, No. 639, p. 964; Acts 1978, No. 840, p. 1247, § 1.)

§ 40-16-2. Production credit associations taxable under chapter.

Production credit associations, incorporated pursuant to the provisions of the act of congress known as the Farm Credit Act of 1933, are not foreign corporations, and any such association which may become taxable by the state shall be subject to the same taxation imposed upon national banks under the provisions of this chapter, and such associations shall be exempt from all other forms of income, privilege and license taxes imposed by the state. (Acts 1965, No. 276, p. 390.)

§ 40-16-3. Returns.

(a) Every financial institution, as in this chapter defined, shall within the first 15 days of April in each year, make and file with the Department of Revenue a return, signed under the penalties of perjury by its cashier, treasurer or other authorized officer or employee, if a corporation, or by a person or authorized employee in charge of the conduct of the business to be taxed if an individual, firm, association or other legal entity, in such form as may be prescribed by the Department of Revenue, giving such detailed information as the Depart-

ment of Revenue may in its opinion require to determine the net income of such financial institution for the taxable year, by the net income of which said excise tax is to be measured.

(b) Qualified corporate groups, as in this chapter defined, shall have the option to file one excise tax return on a consolidated basis or to file separate returns. Qualified corporate groups electing to file one excise tax return on a consolidated basis shall be assessed a fee of $6,000 for the privilege of filing on a consolidated basis. Newly acquired corporations which have a potential separate return year as well as a consolidated year would have the option of filing a separate return including all of their income for that year or filing as part of the consolidated group for the entire taxable year. Newly created, controlled corporations would either file a separate return or as part of the consolidated return determined by the election of the corporate group for that year.

(c) In order for financial institution members of a controlled group to be eligible to elect to file on a consolidated basis, the members would have to meet the following two tests:

(1) OWNERSHIP TEST. Includable financial institutions will be connected through stock ownership with a common parent corporation, which financial institutions are includable corporations if:

a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includable corporations (except the common parent corporation) is owned directly by one or more of the other includable corporations; and

b. The common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of

each class of the nonvoting stock of at least one of the other includable corporations.

(2) FILING TEST. In order to be eligible for this election, each member must be a financial institution as defined in Section 40-16-1 and be required to file an excise tax return.

(d) To the extent operating rules are required for the filing of a consolidated excise tax return, the consolidated return regulations of the Internal Revenue Code and the principles contained therein would be used as a guideline in the absence of clarifying regulations issued by the Department of Revenue.

(e) The Department of Revenue may make such reasonable rules and regulations as it may deem necessary to determine the businesses conducted and in the state which are subject to said excise tax and to determine the net income of such businesses by which said tax is to be measured; provided, that any financial institution conducting a business both within and without the State of Alabama and coming within the provisions of this chapter shall be required to make a report to the Department of Revenue showing the amount of its income received from the business conducted by it within the State of Alabama and the expenses incurred by it in the conduct of its business within the State of Alabama. Failure to file any such return on or before the due date thereof in the absence of extension of time in writing for the filing thereof granted by the Department of Revenue shall subject the financial institution so failing to a penalty of 15 percent of the amount of tax assessed, which amount shall be assessed and collected as a part of the tax, and a like penalty of $5 per day for each day's failure to file such return, which penalty shall be collected by civil action. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 426; Acts 1971, No. 1941, p. 3136; Acts 1978, No. 840, p. 1247, § 2.)

§ 40-16-4. Levy; reporting of tax.

(a) Every such financial institution shall pay to the state annually for each taxable year an excise tax for the privilege of engaging in this state in the business of banking and of conducting a financial institution, as in this chapter defined, and of conducting a business employing moneyed capital coming into competition with the business of national banks measured by its net income for such taxable year at the rate of six percent of such net income. The amount of such excise tax shall not be in excess of any limit fixed thereon by any present or future federal statute relating to the taxation of national banks by this state. Under no circumstances will any dividends paid from a financial institution, as in this chapter defined, to the common parent corporation of a controlled group of corporations, as defined in Section 40-16-3, be subject to excise tax.

(b) The excise tax provided in this chapter shall be reported under blanks in the form to be prescribed by the Department of Revenue. The amount shown to be due by the taxpayer's return shall constitute and create a prima facie liability for such amount on which taxes shall be paid as hereinafter provided. The mailing of the excise tax blank to persons liable for the tax herein provided shall be the only notice required to be given, except where the department assesses an additional amount due. The failure to receive such blank shall not relieve any persons required to make a return from making such return or the penalties for failure to do so or liability for tax. Where the Department of Revenue determines that the amount due is different from that shown by the taxpayer's return or where no return is filed, the department may determine the correct amount due pursuant to the procedures set forth in Chapter 2A of this title. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 427;

Acts 1978, No. 840, p. 1247, § 3; Acts 1992, No. 92-186, p. 349, § 45.)

§ 40-16-5. When tax due; extension of time for payment.

The excise tax hereby levied and to be assessed shall be payable on or before April 15 of the current state tax year and on the same date of each state tax year thereafter for the privilege of engaging in such business within this state during the current state tax year of the corporation. If the financial institution has received a written extension of time to file the excise tax return from the department, then one half of the estimated tax due shall be payable on April 15 and the remaining one-half, plus interest, shall be payable when the return is filed. The Department of Revenue may, in its discretion, extend the time for the payment of the tax either by general extension to all taxpayers liable therefor or by special extension to a particular taxpayer. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 428; Acts 1943, No. 524, p. 490; Acts 1978, No. 840, p. 1247, § 4; Acts 1992, No. 92-186, p. 349, § 46.)

§ 40-16-6. Payment and distribution of tax.

The remittance of the excise tax herein required shall be made to the Department of Revenue at Montgomery, Alabama, with checks payable to the State Treasurer of Alabama. The proceeds of the excise tax herein imposed by this chapter shall be, without delay, covered into the state treasury to the credit of the Financial Institution Excise Tax Fund. Such amount of money as shall be appropriated for each fiscal year by the legislature to the Department of Revenue with which to pay the salaries, the cost of operation and the management of the said department shall be deducted, as a first charge thereon,

from the taxes collected under and pursuant to Section 40-16-4; provided, that the expenditure of said sum so appropriated shall be budgeted and allotted pursuant to Article 4 of Chapter 4 of Title 41 and limited only to the amount appropriated with which to defray the expenses of operating said department for each fiscal year. The balance of the tax collected under and pursuant to said Section 40-16-4 shall, on September 1 in each year, be distributed as follows: On certificate of the Department of Revenue the comptroller shall draw his warrant on the State Treasurer payable to the county treasurer of each of the several counties in which such financial institutions are located for an amount equal to one fourth of the tax received from the institutions located in such county, after deducting the proportionate part of the expenses incurred in the administration of this chapter. On similar certificate the comptroller shall draw his warrant on the State Treasurer in favor of the treasurer of each of the several municipalities in which such financial institutions are located for an amount equal to one half of the tax received from the institutions located in such municipalities, after deducting the proportionate part of the expenses incurred in the administration of this chapter. The amount remaining in such financial institution excise tax fund, after the payment of the expenses as heretofore in this chapter provided, and after the distribution to the counties and municipalities of their proportionate part of the said tax, shall be covered into the general fund of the State of Alabama. Any financial institution which conducts its business in more than one municipality or in more than one county in this state shall, in making the return required by this chapter, report in detail the percentage of its total business in the state conducted in each such municipality and in each such county, and the portions of tax paid by each such financial institution due to be distributed to the municipality

and county shall be distributed pro rata according to the percentage so reported to the several municipalities and counties where such business is conducted instead of solely to the one where the principal place of business of such financial institution is located in this state. No municipality or county within the state shall have the right to levy or assess any such excise tax for the privilege of engaging in such business in addition to that hereby levied and to be distributed to it as herein provided, except license taxes. However, license taxes on banks shall not be levied in excess of those which may be legally levied pursuant to Section 11-51-130, provided however, that the license authorized by subdivisions (1) through (12) of subsection (a) of Section 11-51-130 may be levied only by the municipality where the bank has its principal place of business. (Acts 1935, No. 194, p. 256; Acts 1939, No. 396, p. 517; Code 1940, T. 51, § 429; Acts 1943, No. 547, p. 536; Acts 1951, No. 839, p. 1470; Acts 1991, No. 91-478, p. 866, § 1.)

§ 40-16-7. Refunds.

Repealed by Acts 1992, No. 92-186, § 80, effective October 1, 1992.

§ 40-16-8. Exemptions and credits for other taxes.

All moneyed capital employed in the business the privilege of engaging in which is hereby taxed and the shares of all financial institutions, as in this chapter defined, shall be exempted from assessment and payment of ad valorem taxes, except the moneyed capital and shares of any business hereby taxed which fails to make and file the returns required by this chapter and to pay the tax levied by this chapter as and when in this chapter provided. The real estate owned by every such financial institution shall not be exempted. If any other tax, whether

on property (other than ad valorem taxes on real estate), income, business or any element thereof, except license taxes not in excess of those heretofore legally levied and in effect, is hereafter levied by this state or by any political subdivision of this state on any financial institution as in this chapter defined, the amount of such other tax due by such institution shall be credited on account of the tax payable pursuant to the provisions of this chapter; provided, that no other tax levied by this title shall be credited against the excise tax herein levied. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 431.)

CODE OF ALABAMA 1975

TITLE 40
REVENUE AND TAXATION

CHAPTER 21
PUBLIC UTILITIES

ARTICLE 2
LICENSE TAXES

§ 40-21-50. Levied generally.

For each person operating a public utility, such as a street railroad or interurban railroad operated by electricity or other motive power, waterworks, gas company, pipeline company for transporting or carrying gas, oil, gasoline, water or other commodities, gas distributing companies, whether by means of pipeline or by tanks, drums, tubes, cylinders or otherwise, heating companies or other public utility, except electric, hydroelectric, telephone or telegraph companies, railroad or sleeping car companies and express companies which are otherwise licensed, shall pay to the state a license tax equal to two and two-tenths percent on each $1 of gross receipts of such public utility in this state for the preceding year. For the first year's business, where an existing public utility is taken over, such license tax payable to the state shall be equal to two and two-tenths percent on each $1 of the gross receipts for the preceding year of the public utility taken over, less whatever sum the prior operators have paid as such license tax on the gross receipts for that year. Where no existing public utility is taken over, such license tax for the first year, as well as for the second year, shall be based on the first year's business, but shall in no event be less than $100 for the first year's business; provided, that where business is started after April 1 the payment shall be not less than $50. Any

person establishing a new public utility shall pay to the state the sum of $100 where operation is begun between October 1 and April 1 and $50 when operation is begun after April 1 and shall also at the same time execute a bond, payable to the State of Alabama, to insure payment of whatever sum, in addition to the $100 or $50, which may be due when, at the end of the first year or if operation began after April 1, the amount of the gross receipts is ascertainable. Such license tax shall be paid to the Department of Revenue by check made payable to the treasurer and shall be paid quarterly, one fourth on October 1, one fourth on January 1, one fourth on April 1 and one fourth on July 1 and shall become delinquent on the fifteenth day of each said month, based upon gross receipts for the preceding year, or half year if operations began after April 1. The payment of such license shall be accompanied by a sworn statement made on forms furnished by the Department of Revenue by the president, manager or operating officer of the public utility, or by the owner, receiver, or trustee thereof, giving the name of the person, firm, or corporation owning and operating said public utility and the principal place of business thereof, showing the gross receipts of such public utility for the preceding year. The books of every person operating a public utility shall be at all times open to the inspection of the Department of Revenue. Any person failing to make such sworn statement or willfully making a false statement of the gross receipts of such public utility shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding $500 and shall also forfeit to the state three times the amount of the license on said utility, but no license under this schedule shall be paid to the county or counties. (Acts 1935, No. 194, p.256; Code 1940, T. 51, § 177; Acts 1971, No. 1417, p. 2420, § 1.)

§ 40-21-51. Distribution of revenues generally.

All revenues collected under the provisions of Section 40-21-50 shall, after deduction of the cost of collection, be distributed in the following manner:

(1) Eighty-five percent of the balance remaining after deduction of the cost of collection shall be deposited in the Special Mental Health Fund to be used for mental health purposes; and

(2) Fifteen percent of the balance remaining after deduction of the cost of collection shall be deposited in the state general fund. (Acts 1971, No. 1417, p. 2420, § 2.)

§ 40-21-52. Freight lines and equipment companies.

Any person, firm, joint-stock association, or corporation, wherever organized or incorporated, engaged in the business of operating, renting, leasing, or furnishing cars not otherwise listed for taxation in this state for the transportation of freight, whether such freight is owned by such company or any other person, firm, joint-stock association, or corporation, over any railroad or railway line or lines in whole or in part within this state, such line or lines not being owned, leased, or operated by such person, firm, joint-stock association, or corporation, whether such cars are termed box, flat, coal, ore, tank, stock, gondola, furniture, automobile, refrigerator, or some other name, shall be deemed to be a freight line or equipment company. Each freight line or equipment company doing business, owning, operating, renting, leasing, or furnishing cars which are operated in this state shall, on or before March 1 each year, make and file with the Department of Revenue on a form or forms prescribed by the Department of Revenue a statement under oath by its president, secretary, treasurer, superintendent, manager, receiver, trustee, or owner, showing

the number of miles run by all its cars over the line or lines of each separate railroad or railway in this state, naming each separate railroad or railway, and the total number of miles run by all of its cars over all line or lines of all railroads or railways in this state, and the total number of miles run by its cars over line or lines or railroads or railways everywhere outside of this state, such mileage to be shown as made for the 12-month period preceding October 1 of each year. There shall be shown on the statement the principal place of business, together with the street address of each freight line or equipment company, together with the names and addresses of persons to whom correspondence or tax notice should be sent. It shall be the duty of the Department of Revenue to examine the statement of each freight line or equipment company, and the reports of each railroad or railway company over whose lines such freight line or equipment moved, and from such statements and reports to compute the average number of cars within the state of each freight line or equipment company for the 12 months preceding October 1 of each year; for the average number of cars found to be in the state for such 12 month period, the reasonable value of such cars shall be computed, and the sum total value of the average number of cars shall be reduced to 30 percent thereof. There is hereby levied and it shall be the duty of the Department of Revenue to assess a license tax of three and one-half percent of the 30 percent value of the average number of cars within the state for the period of 12 months preceding October 1 of each year. Such tax shall be assessed pursuant to the procedures for assessment of tax as set out in Chapter 2A of this title.

The tax shall become due on the date of entry of the preliminary assessment and shall be delinquent 30 days after the due date. The tax shall be paid to the Department of Revenue, by check made payable to the treasurer, and the license tax so paid shall be placed to the credit of the state general fund. Each railroad or railway company in this state shall also, annually before March 1 of each year, make and file with the Department of Revenue, under oath of some executive officer of the company and on forms prescribed by the Department of Revenue, a report containing as to all its lines in Alabama all the data required of freight line or equipment companies and any additional information deemed necessary by the Department of Revenue. Any person, firm, corporation, or association operating, renting, leasing, or otherwise furnishing cars as above mentioned, except a regularly organized and operated railroad, is deemed to be a freight line equipment company. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 176; Acts 1971, No. 1413, p. 2408; Acts 1992, No. 92-186, p. 349, § 62.)

§ 40-21-53. Electric, hydroelectric, gas, or any other public utility—Generally—Credit on electric bills for certain persons—Amount.

(a) Each person, firm, or corporation, including any corporations operating an electric or hydroelectric public utility or gas public utility or any other public or municipal utility now paying the two and two-tenths percent shall be subject to the provisions of this section and shall pay to the state a license tax equal to two and two-tenths percent on each $1 of gross receipts of such public utility for the preceding year; except, that gross receipts from the sale of electricity for resale by such electric or hydroelectric public utilities and gross receipts from the sale of electricity to the persons identified in subsection (b) of this section shall be deducted in computing the amount of tax due hereunder. For the first year's business, where an existing electric public utility is taken over, such license tax payable to the state shall be equal to two and two-tenths percent on each $1 of gross receipts for the

preceding year of the electric utility taken over, after deduction of gross receipts derived from sales of electricity for resale and gross receipts from the sale of electricity to the persons identified in subsection (b) of this section and less whatever sum the prior operators shall have paid as such license tax on the gross receipts for that year. Where no existing electric public utility is taken over, the license tax for the first year upon such utility shall be based upon the first year's business, computed as provided hereinabove, but shall in no event be less than $100 for the first year's business. Any person, firm, or corporation establishing a new electric public utility shall pay to the state the sum of $100 and shall also at the same time execute a bond payable to the State of Alabama to insure payment of whatever sum in addition to such $100 may be due when, at the end of the first year the amount of gross receipts for the year is ascertainable. Such license tax shall be paid to the Department of Revenue by check made payable to the treasurer and shall be paid quarterly, one fourth on October 1, one fourth on January 1, one fourth on April 1 and one fourth on July 1 and shall become delinquent on the fifteenth day of each of said months. Payment shall be accompanied by a statement made by the president or other officer of the public utility or by the owner thereof, giving the name of the person, firm, or corporation owning and operating such public utility and the principal place of business thereof, together with a statement under oath of the amount of gross receipts of such public utility for the preceding year. The books of every person, firm, or corporation operating such public utility shall be at all times open to the inspection of the Department of Revenue. Any person failing to make such sworn statement or willfully making a false statement of the gross receipts of such public utility shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding $500

and shall also forfeit to the state three times the amount of the license for such public utility, but no license under this schedule shall be paid to the county or counties.

(b)(1) On or after October 1, 1981 any person who is 62 years of age or older or totally and permanently disabled and such person is head of a household and does not share his or her residence with more than one other adult person who is less than 62 years of age and who receives electricity at such residence from a utility which is subject to the 2.2 percent license tax levied in subsection (a) of this section shall be entitled to qualify, in accordance with the provisions of subdivision (2) of this subsection, for a credit on his or her monthly electric bill in the amount of the exemption from the 2.2 percent license tax with respect to sales of electricity to such person provided in subsection (a) of this section; provided that the combined gross incomes of all persons who live at the residence of such person 62 years of age or older or such totally and permanently disabled person shall not exceed $12,000 annually. Eligibility for this credit applies only to the extent and amount that it is billed to the customers as a normal requirement under its rates.

(2) Any person who seeks to qualify for the credit provided in subdivision (1) of this subsection shall make application to the Department of Pensions and Security in accordance with the rules promulgated by the Department of Pensions and Security for the implementation and enforcement of this section. The Department of Pensions and Security shall periodically notify, in writing, each electric utility in the state which is subject to payment of the 2.2 percent license tax levied in subsection (a) of this section regarding those customers who are entitled to receive the monthly credit. Within 45 days after receipt of notification for such monthly credit the electric utility shall commence

providing such credit for gross receipts license tax that otherwise would be billed.

(3) Any person who wrongfully qualifies for such exemption by giving false information shall be guilty of a misdemeanor and upon conviction may be fined not to exceed $500. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 178; Acts 1971, No. 1412, p. 2406, § 1; Acts 1981, No. 81-867, p. 1659.)

§ 40-21-54. Electric, hydroelectric, gas, or any other public utility—Not to constitute part of gross receipts for purposes of computation of state, county or municipal tax, etc.

The provisions of any state, county or, municipal ordinance or law to the contrary notwithstanding, the tax levied and collectible pursuant to Section 40-21-53 shall be deductible from and shall not constitute a part of gross receipts for purposes of computing the amount due under any state, county or municipal tax, excise, license, or fee which is based upon or measured by the gross receipts of any person, firm, municipality, or corporation operating an electric or hydroelectric public utility subject to the tax levied by said section. (Acts 1971, No. 1412, p. 2406, § 2.)

§ 40-21-55. Electric, hydroelectric, gas, or any other public utility—Distribution of revenues.

All revenues collected under the provisions of Section 40-21-53 shall, after deduction of the cost of collection, be distributed in the following manner:

(1) Eighty-five percent of the balance remaining after deduction of the cost of collection shall be deposited in the Special Mental Health Fund to be used for mental health purposes; and

(2) Fifteen percent of the balance remaining after deduction of the cost of collection shall be deposited in the general fund. (Acts 1971, No. 1412, p. 2406, § 3.)

§ 40-21-56. Manufacturers and sellers of hydroelectric power.

In addition to all other taxes of every kind now imposed by law or otherwise imposed by this title, there is hereby levied a license or privilege tax upon each person, firm, corporation, agent or officer engaged in the business of manufacturing and selling hydroelectric power in the State of Alabama for the privilege of engaging in such business; said license or privilege tax shall be due and payable in advance, on or before September 25 of each year, and shall be in sum equal to two fifths of a mill upon each kilowatt hour of hydroelectric power manufactured and sold during the preceding calendar year. (Acts 1935, No. 194, p.256; Code 1940, T. 51, § 179; Acts 1957, No. 551, p. 772.)

§ 40-21-57. Railroads.

Repealed by Acts 1994, No. 94-714, effective May 4, 1994.

In addition to all other taxes imposed by this title, there is hereby levied a license or privilege tax upon each person engaged in the business of operating a railroad in the State of Alabama for the privilege of engaging in such business; said license tax or privilege tax shall be due and payable annually in advance on or before September 25 of each year to the Department of Revenue by check made payable to the treasurer, and shall be in a sum equal to two and one-half percent of the gross receipts in excess of $150,000 of such railroad from all intrastate business of such railroad within the State of Alabama during the preceding year, the gross intrastate earning to be determined by the amount received from

intrastate business. (Acts 1935, No. 194, p. 256, Code 1940, T. 51, § 180; Acts 1943, No. 519, p. 487; Acts 1957, No. 547, p. 767; Acts 1971, No. 1415, p. 2411.)

§ 40-21-58. Telephone business.

Repealed by Acts 1992, No. 92-623, § 16, effective September 30, 1992.

In addition to all other taxes imposed by this title, there is hereby levied a license or privilege tax upon each person engaged in the telephone business in the state of Alabama for the privilege of engaging in such business, and said license or privilege tax shall be due and payable annually in advance on or before September 25 of each year to the department of revenue, by check made payable to the treasurer, and shall be in a sum equal to two and one-half percent of the total gross receipts of such telephone company from all the intrastate business within the state of Alabama during the preceding calendar year, the gross intrastate earnings to be determined by the amount received from intrastate business and from messages originating at points in Alabama destined to other points in Alabama although transmitted through another state, said last named earnings to be apportioned on the basis of earnings per mile transmitted. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 58, p. 36; Code 1940, T. 51, § 182; Acts 1957, No. 548, p. 768; Acts 1971, No. 1411, p. 2405.)

§ 40-21-59. Telegraph business.

Repealed by Acts 1992, No. 92-623, § 17, effective September 30, 1992.

Each person engaged in the business of operating in this state a telegraph system or telegraph line for hire, and without reference to its interstate commerce or governmental business which it is not proposed to tax, shall,

in addition to all other taxes of every kind imposed by this title, pay to the department of revenue annually in advance on or before October 15 of each year, by check made payable to the treasurer, a sum equal to two and one-half percent of the total gross receipts of such telegraph company from all intrastate business within the state of Alabama during the preceding calendar year. The gross intrastate earnings shall be determined by the amount received from intrastate business and from messages originating at points in Alabama destined to other points in Alabama although transmitted through another state, said last named earnings to be apportioned on the basis of earnings per mile transmitted;. and no telegraph company which has paid the license or privilege tax herein required shall be liable to pay any license or privilege tax to counties and shall not exempt its real estate, fixtures and other property, which shall be subject to taxation as other property in the state, nor shall such payment exempt such corporation from the payment of franchise or income tax. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 183; Acts 1971, No. 1410, p. 2405.)

§ 40-21-60. Express companies—Generally.

In addition to all other taxes of every kind imposed by this title, there is hereby levied a license or privilege tax upon each person engaged in the business of operating an express company in the State of Alabama for the privilege of engaging in such business; said license or privilege tax shall be due and payable to the Department of Revenue by check made payable to the treasurer annually in advance, on or before October 1 of each year, and shall be in a sum equal to two and one-half percent of the gross receipts of such express company from all the intrastate business within the State of Alabama during the preceding calendar year. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 84.)

§ 40-21-61. Express companies—Alternative Tax.

There shall be levied and collected from every person doing an express business between points wholly within this state and without reference to its interstate business, whether incorporated under the laws of this state or any other state or whether incorporated at all, a license or privilege tax of $4,000, which shall be paid to the Department of Revenue by check made payable to the treasury by said company on or before the expiration of the fifteenth day of each fiscal year; provided, that any express company which operates on less than 50 miles of railroad, street railway, motor line, or boat line shall pay an annual tax of $250; and provided, that any express company which operated on 50 miles of railroad, street railway, motor line, or boat line, and less than 200 miles of railroad, street railway, motor line or boat line, shall pay an annual license of $500; and provided further, that all express companies that operate on 200 and not over 500 miles shall pay an annual tax of $2,500. It is not intended that the taxpayer under this section and Section 40-21-60 shall pay both the taxes therein mentioned, but that the taxpayer shall pay the larger of the two. The tax levied by this section and Section 40-21-60 shall not apply to bus lines which pay a license and mileage tax under Chapter 19 of this title and which carry express as a regular part of their business of hauling passengers. (Acts 1935, No. 432, p. 910; Code 1940, T. 51, § 185.)

§ 40-21-62. Report of gross receipts by utility.

In all cases where a public utility is required under this title to pay a privilege or license tax on gross receipts, such public utility shall make report to the Department of Revenue of such gross receipts to which such tax is applicable in a manner and form which will show the correct and true amount of such gross receipts upon

which the tax is computed. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 181.)

§ 40-21-63. Receipts from department.

The Department of Revenue shall, upon receipt of any amount of money due for tax on gross receipts of any public utility, mail to such utility paying the tax a receipt therefor. Such a receipt shall state specifically the section of this title levying the tax for which such receipt is given. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 187.)

§ 40-21-64. Counties not to levy privilege or license taxes.

No county shall levy a privilege or license tax on any business or occupation on which a privilege or license tax is levied by this article or on any telephone or telegraph utility business. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 188; Acts 1992, No. 92-623, p. 1466, § 13.)

CODE OF ALABAMA 1975

TITLE 27
ALABAMA INSURANCE CODE

CHAPTER 4
FEES AND TAXES

* * *

§ 27-4-9. Taxation by counties not allowed.

No license or privilege tax shall be charged any insurer by or on behalf of any county. (Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 826; Acts 1971, No. 407, p. 707, § 84.)

LICENSE CODE
OF
JEFFERSON COUNTY
ALABAMA

This License Code of Jefferson County, Alabama, originally adopted as Ordinance No. 1 of the Jefferson County Commission on September 10, 1968, and as amended through Ordinance No. 1172 on January 24, 1989, is hereby recompiled and published as follows:

Section 1. . That the codification of the License Code of Jefferson County, Alabama, for the fiscal year 1989-1990, and each fiscal year thereafter as set out in Section 2 through 25 hereof, be and the same is adopted as the License Code of Jefferson County, Alabama, for the fiscal year of 1989-1990, beginning October 1, 1989, and running through September 30, 1990, and each fiscal year thereafter.

Section 2. . . . The following is hereby declared to be the schedule of licenses for the fiscal year commencing October 1, 1989, and running through September 30, 1990, and for each fiscal year thereafter, for diverse businesses, vocations, occupations and professions engaged in or carried on in Jefferson County, Alabama, in each fiscal year and it shall be unlawful for each and every person, firm, company or corporation engaged in any business, vocation, occupation or profession enumerated herein in each fiscal year to fail to pay and take out such licenses in such sums as are herein provided. In addition there shall be charged an issuance fee of One Dollar which shall include mailing costs.

2 — ADVERTISING — Each person, firm or corporation who solicits within Jefferson County intrastate advertising

to be done for persons, firms or corporations having places of business in Jefferson County by means of radio broadcasting or televising through radio or television stations situated in Jefferson County, Alabama, shall pay a license of $ 150.00.

It is intended that no license shall be levied by this schedule upon interstate radio broadcasting, televising and/or advertising solicitation.

5 — AGENTS, DEALERS OR OTHER BUSINESSES: (a) Each person, firm or corporation who, as principal, agent or in any other capacity, shall engage in or transact any trade, business, commerce, occupation, vocation or profession for gain or profit and for whom no other license is specifically required by this Code, shall pay a license as follows:

Where gross annual business from said business from the previous year is less than

$ 5,000	$15.00
$ 5,000 and less than $ 10,000	25.00
$10,000 and less than $ 15,000	37.50
$15,000 and less than $ 20,000	50.00

Plus an amount equal to 1/40 of 1% of gross annual business in excess of $ 20,000.

(b) . Any person, firm or corporation, who shall maintain, keep in repair or otherwise man any office, store, warehouse, place of business, telephone wires, telegraph wires, right of way, easement, land or other facility or facilities situated in Jefferson County, Alabama, in connection with any business, vocation, occupation or profession which is not subject to a license under any other schedule of this Code or under (a) of this schedule shall pay for the protection afforded by the laws, ordinances, rules and regulations of Jefferson County, Alabama, and its agencies to such person, firm or corporation in connection with the maintaining, keeping in repair or otherwise manning any such office, store, warehouse, place of business, telephone wires, telegraph wires, right of way, easement, land or other facility or facilities an annual license fee or tax as follows: Where there was employed in connection with the maintaining, keeping in repair or otherwise manning any such office, store, warehouse, place of business, telephone wires, telegraph wires, right of way, easement, land or other facility or facilities during the next preceding calendar year in Jefferson County, Alabama, an average daily number of employees:

Less than two persons	$ 15.00
Two but less than four persons	30.00
Four but less than six persons	45.00
Six but less than ten persons	60.00
Ten but less than fifteen persons	75.00
Fifteen persons or more	90.00

Plus $5.00 for each person in excess of fifteen.

6 — AIRCRAFT — Each person, firm or corporation engaged in the sale, rental, chartering, or leasing of aircraft and/ or the alteration, rebuilding, or repairing of same, shall pay a license of 1/40 of 1% of the gross receipts from said business from the previous year with a minimum license of ..... $ 50.00

7 — BOOKKEEPERS AND TAX CONSULTANT — Each person, firm or corporation doing business as a bookkeeper or tax consultant for hire shall pay a license where gross fees from services rendered during the year next preceding the current license year are less than:

$ 5,000	$15.00
$ 5,000 and less than $ 10,000	25.00
$ 10,000 and less than $ 15,000	37.50
$ 15,000 and less than $ 20,000	50.00
$ 20,000 and less than $ 25,000	62.50
$ 25,000 and less than $ 30,000	75.00

Plus an amount equal to 1/10 of 1% of subject professional fees in excess of $30,000.00.

9 — AUTOMOBILE POLISHING AND/OR WASHING — Each person, firm or corporation whose principal business is the polishing, waxing, and/or washing of automobiles or other motor vehicles shall pay a license of $37.50. Where polishing, waxing, and/or washing of automobiles is incidental to the principal business a license fee of $ 9.00 will be paid.

10 — TRAILERS — AND AUTOMOBILE DRIVE-IT-YOURSELF CARS AND TRUCKS — Each person, firm or corporation engaged in the business of renting or leasing trailers or in the business of what is commonly known as a "Drive-It-Yourself Business," operating automobiles and trucks as rent cars or trucks, or on any plan by which persons pay for their service or use, but not including jitneys, taxi-cabs, or sightseeing buses, shall pay a license based on the number of such trailers, automobiles and trucks employed in the business as follows:

1	Unit and not more than 5 Units	$ 50.00
6	Units and not more than 10 Units	100.00
11	Units and not more than 25 Units	200.00
26	Units and not more than 50 Units	300.00
51	Units and not more than 100 Units	400.00
101	Units and not more than 250 Units	500.00
251	Units and over	600.00

The number of units normally employed in the business shall be used as the basis of the above license.

Any person, firm or corporation who pays a license under this paragraph and who leases automobiles from any other person, firm or corporation which pays a license under this paragraph then only the owner of the automobiles will include said automobiles in the number of units on which he purchases his license. It being the

intention that only one license as provided for under this paragraph be purchased on any automobile.

11 — AVIATION SCHOOLS — Each person, firm or corporation offering for hire instruction and training in navigating and/or flying aircraft of any kind shall pay a license of 1/4% of the gross receipts from said business from the previous year with a minimum of $ 50.00.

12 — BAKERY — Each person, firm or corporation conducting a bakery as its principal business and in connection therewith operating a vehicle on a street or public highway, shall pay a license of 1/40 of 1 % of the gross receipts from said business from the previous year with a minimum license of $ 50.00.

Where such business does not operate a motor vehicle on the streets or public highways in connection with said business, and gross receipts are:

Less than $ 50,000	$ 30.00
$ 50,000 and not more than $ 100,000	50.00

Plus an amount equal to 1/40 of 1% of gross receipts in excess of $ 100,000.

The aforesaid schedule of license shall also apply to the making of donuts where the same are sold at wholesale only.

13 — BAKERY GOODS, INCLUDING DONUTS — Each retail dealer in bakery goods and donuts, when principal business, shall pay a license of 1/40 of 1% of the gross receipts from said business from the previous year with a minimum license of $ 30.00.

14 — BARBER AND/OR BEAUTY SUPPLY HOUSE — Each person, firm or corporation shall pay a license of 1/40 of 1% of the gross receipts, less sale price of returned goods and amount of adjustment on sales, from said busi-

ness from the previous year with a minimum license of $ 50.00.

16 — BOOTBLACKING — Each person, firm or corporation engaged in Bootblacking shall pay an amount in dollars equal to four and one-half (41/2) multiplied by the number of patrons who can be accommodated at one time by the seating facilities provided for bootblacking purposes, but in no event less than $4.50.

19 — CEMETERY, OR MAUSOLEUM COMPANIES — Each person, firm or corporation, operating a cemetery or mausoleum company, for gain or profit, shall pay a license where gross annual receipts are less than:

$ 10,000	$ 25.00
$ 10,000 and less than $ 20,000	50.00
$ 20,000 and less than $ 40,000	100.00
$ 40,000 and less than $ 60,000	150.00
$ 60,000 and less than $ 80,000	200.00
$ 80,000 and less than $ 100,000	250.00

Plus an amount equal to 1/40 of 1% of gross annual business in excess of $ 100,000.

21 — METALLURGIST, SURVEYORS, AND ENGINEERS — Each person, firm or corporation where gross professional fees from services during the year next preceding are less than:

$ 5,000	$15.00
$ 5,000 and less than $ 10,000	25.00
$ 10,000 and less than $ 15,000	37.50
$ 15,000 and less than $ 20,000	50.00
$ 20,000 and less than $ 25,000	62.50
$ 25,000 and less than $ 30,000	75.00

Plus an amount equal to 3/40 of 1% of subject fees in excess of $ 30,000.

25 — AMUSEMENT AND ENTERTAINMENT — (a) Each person, firm or corporation engaged in the business of promoting, producing or presenting professional wrestling matches, basketball games, or other athletic events shall pay a license of 1/16 of 1% of the gross receipts from said business from the previous year with a minimum license of $100.00.

(b) TRANSIENT EVENT LICENSE FEE — Where any of the above enumerated events are transient in nature and such events will be for a period of less than 5 days in any calendar year, a license shall be paid for each day in the amount of $ 7.50.

26 — HOUSEMOVERS AND/OR HOUSE WRECKERS — Each person, firm or corporation engaged in the business of house moving or house wrecking shall pay a license of $ 60.00.

27 — COURT REPORTING — Each person, firm or corporation engaged in the business of court reporting, where gross fees from services rendered during the year next preceding are less than:

$ 5,000	$15.00
$ 5,000 and less than $ 10,000	25.00
$ 10,000 and less than $ 15,000	37.50
$ 15,000 and less than $ 20,000	50.00
$ 20,000 and less than $ 25,000	62.50
$ 25,000 and less than $ 30,000	75.00

Plus an amount equal to 1/10 of 1% of subject fees in excess of $ 30,000.

29 — CURB MARKET, COVERED — Any person, firm, corporation or association who, or which, is in charge or control of any building, shed, tent or other structure or any group of buildings, sheds, tents, or other structures situated upon a contiguous area of land, the ground

story or stories of which is or are designated or used for the contemporaneous conduct of four or more separate businesses of the class herein described, and who, or which, is engaged in the business of granting to others, for compensation, rights to use ground floor space in or under any such shelter or structure for the purpose of their keeping or displaying poultry, game, eggs, butter, cheese, fruits, vegetables and/or other farm or garden products, for sale, shall pay for the privilege of so engaging in the business of granting such rights, an amount equal to 4/10 of 10 per square foot of ground area sheltered by such structure or structures, but in no case less than $ 30.00.

30 — CURB MARKET, OPEN — Any person in charge or control of any open air contiguous area of land, who shall engage in the business of granting to others, for compensation, rights to occupy open air space in or upon such area for the purpose of there keeping or displaying either upon vehicles, stands, or otherwise, poultry, game, eggs, butter, cheese, fruits, vegetables, and/or other farm or garden products, for sale, shall pay for the privilege of so engaging in the business of granting such rights an amount equal to 2/10 of l(P per square foot of ground within the limits set aside for, or devoted to, such occupancy, but in no case less than $ 30.00.

31 — DENTAL DEPOT OR LABORATORY — Each person, firm or corporation operating a dental depot or dental laboratory shall pay a license of 3/80 of 1% of the gross receipts from said business from the previous year with a minimum license of $ 30.00.

32 — DISINFECTANTS, INSECTICIDES AND/OR EXTERMINATORS — Each person, firm or corporation whose principal business is disinfectants, insecticides

and/or exterminating shall pay a license of 1/40 of 1% of the gross receipts, less returned goods, from said business from the previous year with a minimum license of $ 30.00.

Where only service is rendered the license shall be paid on the basis of the number of workers.

Where only one worker	$15.00
Where 2 and less than 4 workers	30.00
Where 4 and less than 6 workers	45.00
Where 6 and less than 10 workers	60.00
Where 10 and less than 15 workers	75.00
Where 15 and over	90.00

33 — DRESS SHOPS, CLOTHING SHOPS, SHOE AND/OR HAT SHOPS — Each person, firm or corporation engaged in the principal business of selling at retail ready-to-wear clothes, shoes, hats or other wearing apparel, including any such products stored in a warehouse for sale, lease, distribution or delivery, whether as owner, dealer, agent or consignee shall pay a license on each place of business where the gross receipts from such business, including receipts of leased departments, for the preceding year were less than:

$ 50,000	$ 30.00
$ 50,000 and not exceeding $ 100,000	50.00

Plus an amount equal to 1/40 of 1% of gross receipts in excess of $ 100,000.

34 — PRESCRIPTION SHOP — Each person, firm or corporation engaged in the operation of a prescription shop, where prescriptions are filled as its principal business shall pay a license on each place of business where gross receipts are less than:

$ 30,000	$ 50.00

An additional license shall be paid equal to 1/40 of I% of such gross receipts in excess of $30,000.

35 — EMPLOYMENT AGENCY — Each person, firm or corporation operating as a labor agent or as an employment agency shall pay a license computed as follows: Where gross fees or service charges for the year next preceding were less than:

$ 10,000	$ 100.00
$ 10,000 and less than $ 20,000	125.00
$ 20,000 and less than $ 30,000	150.00
$ 30,000 and less than $ 40,000	175.00
$ 40,000 and less than $ 50,000	200.00
$ 50,000 and less than $ 60,000	225.00
$ 60,000 and less than $ 70,000	250.00
$ 70,000 and less than $ 80,000	275.00
$ 80,000 and over	300.00

With a minimum license of $ 100.00 in any case.

37 — FISH AND OYSTER PEDDLER — Each person, firm or corporation who is engaged in selling fish or oysters in the county without regularly maintaining a place of business for such sales in the county shall pay a license of $ 50.00 on each truck or vehicle used in said business.

38 — FLORIST — Each person, firm or corporation engaged in the floral trade as his principal business where gross annual receipts for the next preceding year are less than:

$ 5,000	$ 15.00
$ 5,000 and less than $ 10,000	25.00
$ 10,000 and less than $ 15,000	37.50
$ 15,000 and less than $ 20,000	50.00

Plus an amount equal to 1/40 of 1% of gross receipts in excess of $ 20,000.

40 — GUARD, PATROL OR SECURITY SERVICE — Each person, firm or corporation operating and/or providing a private police patrol, security or guard service or armored cars for the transportation of money for hire shall pay a license for each employee or person so engaged as follows:

Where only one worker	$ 15.00
Where two and less than four workers	30.00
Where four and less than seven workers	45.00
Where seven and less than eleven workers	62.50
Where eleven or more	75.00

Plus $ 5.00 for each worker in excess of eleven.

41 — RETAIL FOOD STORE — Each person, firm or corporation engaged in the business of selling at retail those products ordinarily sold in retail food stores, including but not limited to canned goods, vegetables, fruits, condiments, sugar, coffee, tea, dairy products, bakery goods, meats, and prepared foods for off premises consumption, shall pay a license of $ 37.50 on the first $ 20,000 or less of gross receipts, including receipts of leased departments, from such business for the year next preceding plus an amount equal to 1/40 of 1% of all gross receipts in excess of $ 20,000.

42 — ICE CREAM AND/OR SNOWBALLS — Each person, firm, or corporation whose principal business is the retailing of ice cream, frozen yogurt or ice snowballs, except restaurants serving meals and/or where sold in a drug store, shall pay a license where gross receipts are less than:

$ 20,000	$ 15.00
$ 20,000 and not more than $ 30,000	25.00
$ 30,000 and not more than $ 40,000	37.50
$ 40,000 and over	50.00

43 — INDUSTRIAL TRAFFIC MANAGER OR MANAGEMENT AND RATE INFORMATION BUREAU — Each industrial traffic manager, or person, firm or corporation, operating a management and rate information bureau shall pay a license of $ 50.00.

44 — INFIRMARIES, HOSPITALS, CLINICS, SANITARIUMS, AND/ OR NURSING HOMES — Each person, firm or corporation conducting or operating an infirmary, hospital, clinic, sanitarium, sanitarium, and/or nursing home shall pay a license for each such place based on the number of rooms in such place.

Where less than 20 rooms	$ 30.00
20 rooms and less than 35 rooms	45.00
35 rooms and less than 50 rooms	60.00
50 rooms and less than 75 rooms	90.00
75 rooms and less than 100 rooms	120.00
100 rooms and over	150.00

All rooms, whether as wards for patients or bedrooms for others, to be liable for said license.

45 — INSPECTOR — Each person, firm or corporation engaged in the business of inspecting steel, steel products, concrete and concrete products, and other inspections where a fee is charged.

Where only one inspector	$15.00
2 inspectors and less than 4	30.00
4 inspectors and less than 6	45.00
6 inspectors and less than 10	60.00
10 inspectors and less than 15	75.00
15 inspectors and less than 20	90.00
20 inspectors and less than 25	105.00
25 inspectors and over	120.00

47 — JITNEYS — Each person, firm or corporation operating a jitney with a seating capacity of five (5) or less shall pay a license of $ 15.00.

Each person operating a jitney with a seating capacity of more than five (5) shall pay a license of $ 60.00 plus $ 16.00 additional for each seat in excess of five (5).

48 — JUNK WAGONS OR TRUCKS — Each person, firm or corporation operating a junk wagon or truck not owned by a licensed junk yard shall pay a license for:

Each Wagon	$ 12.50
Each Automobile or Truck	25.00

49 — LANDSCAPE GARDENERS AND ARCHITECTS — Each person, firm or corporation where gross receipts for the year next preceding are less than:

$ 3,000	$ 15.00
$ 3,000 and less than $ 5,000	24.00
$ 5,000 and less than $ 7,500	36.00
$ 7,500 and over	50.00

50 — MANUFACTURING, FABRICATING, PROCESSING PLANT — Each person, firm or corporation or association engaged in the business of manufacturing, fabricating and/or processing by hand, machinery or otherwise, wares or material of any kind, shall pay a license equal to 1/40 of 1% of the gross receipts from sales or stock transfers thereof, less adjustments and returned goods, from said business from the previous year with a minimum license of $30.00.

51 — MERCHANDISE RETAIL — WHOLESALE — Each person, firm, or corporation engaged in the business of offering for sale, leasing, taking or soliciting orders for sale, or leasing or selling merchandise of any description, including any such products stored in a warehouse for sale, lease, distribution or delivery, whether as owner, dealer, agent or consignee, shall pay a license where the gross receipts from such business, in-

cluding receipts of leased departments, for the year next preceding, less returned goods were:

(a) $ 60,000 or less ..... $ 15.00

(b) Where gross receipts as above defined exceed $ 60,000, the annual license lee shall be 1/40 of 1 % of all gross receipts. Provided, however, there shall be a minimum license of $15.00.

52 — MESSENGER SERVICE — Each person, firm or corporation operating as a messenger service, delivering messages only, shall pay a license of $ 12.00. Each person, firm or corporation engaged in package delivery, shall pay a license for each vehicle as follows: Less than 12,000 pounds Gross Vehicle Weight

(G.V.W.) ..... $ 6.00

12,001 to 42,000 pounds G.V.W 12.00

Over 42,000 pounds G.V.W 15.00

For the purpose of this subsection, gross vehicle weight shall mean the empty weight of the truck or truck tractor plus the heaviest load to be carried.

Where a trailer is used, an additional license shall be paid equal to one-fourth of the amount due to be paid on the vehicle to which the trailer is attached.

53 — MORTGAGE LOANS — Each person, firm, or corporation lending money on mortgages secured by real estate in this county shall pay a license based on the aggregate amount of brokerage, commissions and fees for such loans. The license fee shall be an amount equal to 3/32 of 1% of the aggregate amount of brokerage, commission and fees received during the year next preceding with a minimum license of $ 30.00.

55 — NEWSPAPERS AND MAGAZINES — Each person, firm or corporation issuing any kind of a newspaper or magazine shall pay a license on the following basis:

Where gross receipts including receipts from advertising from said business for the year next preceding were less than:

$ 25,000 ..... $ 15.00

$ 25,000 and less than $ 60,000 ..... 30.00

$ 60,000 and less than $100,000 ..... 50.00

Plus an amount equal to 1/40 of 1 % of all gross receipts, including advertising receipts, in excess of $ 100,000.

In addition to the license required by this schedule, there shall be paid an additional license of $50.00 where newspapers are sold on the public streets, sidewalks or other public property where such sales are made by individuals.

57 — NEWSBOYS — Each person selling newspapers on the public streets for which no privilege license under Subsection 55 is paid by the person, firm or corporation conducting or issuing such newspapers shall pay a license of $ 15.00.

59 — OILS, WHOLESALE — Each person, firm, or corporation dealing in lubricating, illuminating, fuel gasoline, benzol, benzol products, linseed or turpentine oils, one or more, shall pay a license of 3/80 of 1% of gross receipts less returned goods for the year next preceding the current license year with a minimum license in any case of $ 60.00.

This sub-paragraph shall not be subject to the provisions of Section 5(a) of this Code.

Receipts above mentioned are to include along with the regular and ordinary receipts all deliveries made from a wholesale stock to a retail stock department, regardless of the fact that the same party owns and operates, either in whole or in part, or both, the wholesale and retail business. Receipts for such deliveries shall be deemed to be not less than at wholesale value of such oil

or products in the event there is not actual receipt. The term "gross receipts" as used in this sub-paragraph shall mean the entire receipts of said business but said term "gross receipts" shall not include Federal, State, County and Municipal taxes collected by said dealer from the purchaser of said product where the dealer is acting as agent for the governmental body in the collection of said taxes.

60 — OIL, AUTOMOBILE, RETAIL AND ANTI-FREEZE — Each person, firm or corporation selling automobile oils or anti-freeze at retail, other than where sold at a gasoline filling station, shall pay a license of 3/80 of 1% of gross receipts from the sales of such business during the year next preceding the current license year, with a minimum license for each place where such oil is sold of $ 30.00.

61 — OIL — Each person, firm or corporation selling as agent, lubricating, illuminating fuel, gasoline, benzol, benzol products or other oil products, shall pay for the privilege of engaging in such business within Jefferson County a privilege tax at the rate of $ 25.00 per annum for each truck used in said business, whether said truck be owned by such agent or not.

62 — ORE, STONE, CEMENT, SAND, LIME, SLAG, CONCRETE, GRAVEL, MORTAR, SEWER OR WATER PIPE — INCLUDING ALL BY PRODUCTS — Each person, firm, corporation or association engaged in the principal business of selling either at wholesale or retail, or both, ore, stone, cement, sand, lime, slag, concrete, gravel, mortar, sewer or water pipes, or any similar material or product, or any by-product thereof, anyone or all, shall pay a license of 1/40 of 1% of gross receipts, less adjustments and returned goods for the year next preceding the current license year, from all commodities delivered within the County from plants or places without the County, and from all commodities delivered within or without the County, and from all commodities delivered within or without the County from plants or places within the County. For the purposes of this schedule, the plural includes the singular, and a "plant" or "place" shall be deemed within the County if a part thereof lies within and a part without the County. Gross receipts shall be reduced by the amount of sales of products manufactured by the seller, if the seller has paid a privilege license for said manufacturing. The minimum license fee shall be $30.00.

63 — PEANUTS AND POPCORN — Where, as its principal business, peanuts or popcorn are prepare and sold at retail direct to the trade, where gross receipts are less than:

$ 2,000	$ 9.00
$ 2,000 and less than $ 5,000	15.00
$ 5,000 and less than $ 8,000	21.00
$ 8,000 and over	30.00

This license is to be paid in addition to all other licenses.

64 — PEANUT DEALERS — Any person, firm or corporation who engages in the business of dealing in peanuts, where this is the principal business, shall pay a license of 1/40 of 1% of the gross receipts from said business from the previous year with a minimum license of $ 30.00.

65 — PET SHOPS — Each person, firm or corporation, who operates as its principal business a pet shop, including the sale of cats, dogs, and birds, shall pay a license for each such place of $ 15.00.

66 — PIANO TUNER — Each	$ 5.00
Where organs are tuned and repaired, additional	15.00

67 — POULTRY AND EGGS, WHOLESALE — Each person, firm or corporation engaged in the business of selling poultry and eggs at wholesale but who does not .regularly maintain within the County an established place of business from which is delivered the majority of their sales, but who commonly engages in selling and delivering by motor vehicle poultry and eggs as a principal business from outside said County to a point within said County, shall pay a license of $ 37.50 on each motor vehicle used in said business. In the event gross receipts in the County exceed $ 50,000 per annum, no privilege license shall be paid on any motor vehicle used in said business but the license shall be $ 50.00 on the first $ 100,000.00 or less of gross receipts from said business for the year next preceding plus an amount equal to 1/40 of 1% of all such gross receipts in excess of $ 100,000.00.

68 — POULTRY AND EGGS, WHOLESALE — Each person, firm or corporation selling poultry and eggs at wholesale, where principal business, shall pay a license of $ 50.00 on the first $ 100,000.00 or less of gross receipts from said business for the year next preceding plus an amount equal to 1/40 of 1% on all gross receipts, from said business for the year next preceding the current license year in excess of $ 100,000.00. The above license shall apply only to those who regularly maintain within the County an established place of business from which is delivered the majority of their sales, or to those persons who maintain or store within the County a stock of poultry products or eggs, either in the shell or in dehydrated or powdered form, for delivery, sale or distribution. Where such sales are not the principal business, and total gross sales of poultry and eggs for the year next preceding were less than $ 50,000.00 the license for the selling of poultry and eggs shall be $ 15.00.

70 — PRINTING, ENGRAVING, PHOTOENGRAVING, MULTIGRAPH, MIMEOGRAPH, LINOTYPE, BOOKBINDING OR RULING — Each person, firm or corporation operating a job printing office or linotype machine with or without printing press or bookbinding, or engaged in the business of printing, engraving, photoengraving, multigraph, mimeograph, linotype, bookbinding or ruling shall pay a license of 1/40 of 1% of the gross receipts from said business from the year next preceding the current license year with a minimum license of $ 24.00.

This license to be paid in addition to the other licenses provided for in this Code where merchandise, stationery and other office supplies are sold.

71 — REPAIR SHOP — Each repair shop, or the doing of repair work, where

Only one worker	$15.00
Where 2 and less than 4 workers	30.00
Where 4 and less than 6 workers	45.00
Where 6 and less than 10 workers	60.00
Where 10 and less than 15 workers	75.00
Where 15 and over	90.00

72 — SCHOOL — Each person, firm or corporation conducting a school or course of instruction as a business other than aviation school provided for by Subsection 11 of this Code, shall pay a license for the privilege of engaging in such business as follows provided, however, this license shall not apply to public or church related schools.

Where gross receipts from said business from the previous year were less than:

$ 10,000	$ 12.50
$ 10,000 and less than $25,000	20.00
$ 25,000 and less than $60,000	30.00

$ 60,000 and less than $80,000 ..... 40.00
$ 80,000 and less than $100,000 ..... 50.00
Plus an amount equal to 1/40 of 1% of gross receipts in excess of $ 100,000.

74 — SWIMMING POOLS — Each person, firm or corporation operating a swimming pool for which an admission, or membership fee, is charged shall pay a license of $ 90.00.

75 — TAILORING — Each person, firm or corporation engaged in the principal business of tailoring, altering or renting wearing apparel, or acting as agent for same, or soliciting orders for same, whether the tailoring is done either within or without the County, shall pay a license as follows: Where the gross receipts from the previous year
Were less than $5,000 ..... $15.00
$ 5,000 and less than $ 10,000 ..... 25.00
$ 10,000 and less than $ 15,000 ..... 37.50
$ 15,000 and less than $ 20,000 ..... 50.00
Plus an amount equal to 1/40 of 1% of gross receipts in excess of $ 20,000.

76 — TAXICABS — Each person, firm or corporation operating automobiles or motor vehicles commonly called and known as taxicabs (but not including jitneys and regularly established inter-urban bus lines), for each vehicle so operated $ 15.00.

77 — TREE PRUNING AND TREE SURGERY — Each person, firm or corporation engaged in doing tree pruning or tree surgery:
Where only one worker ..... $ 15.00
Where 2 or less than 4 workers 30.00
Where 4 or less than 6 workers 45.00
6 workers and over 60.00

78 — UNDERTAKERS — Each person, firm or corporation engaged in the business of undertaking, shall pay where gross annual business is less
Than $ 100,000 ..... $100.00
And for each $ 50,000 or fractional part
thereof in excess of $ 100,000 ..... $ 30.00

80 — WATCHMAKER AND REPAIR — Each person, firm, or corporation repairing watches, or operating as a watchmaker, or an employee thereof, shall pay a license of $ 15.00 for each person or employee so engaged.

83 — WINDOWS, HOUSE CLEANING AND/OR JANITORIAL SERVICE — Each person, firm or corporation engaged in the business of cleaning windows, house cleaning and/or janitorial services for the public shall pay a license for each employee or person so engaged, as follows:
Where only one worker $15.00
2 workers and less than 4 workers 30.00
4 workers and less than 6 workers 45.00
6 workers and less than 10 workers 60.00
10 workers and less than 15 workers 75.00
15 workers and over 90.00

87 — WAREHOUSE

(a) Each person, firm, or corporation engaging in warehousing other than cold storage warehousing, shall pay a license as follows: Where total floor space in said warehouse is 20,000 square feet or less $45.00

(b) An additional license fee of 3/20 of one cent per square foot shall be paid for any footage in excess of 20,000 feet.

(c) This Subsection 87 and Subsection 88 below shall be the sole applicable and governing provision of the License Code of Jefferson County under which licenses

are required and license fees are imposed for a cooperative grocers association which maintains a warehouse whether cold storage or otherwise, for the purpose of distributing groceries to member retail stores.

88 — WAREHOUSE, COLD STORAGE

(a) Each person, firm or corporation in cold storage warehousing shall pay a license fee as follows: Where total space in said warehouse is less than 100,000 cubic feet $30.00.

(b) And for each additional 100,000 cubic feet or fraction part thereof, an additional license of $30.00 shall be paid.

(c) This Subsection 88 and Subsection 87 above shall be the sole applicable and governing provisions of the License Code of Jefferson County under which licenses are required and license fees are imposed for a cooperative grocers association which maintains a warehouse whether cold storage or otherwise, for the purpose of distributing groceries to member retail grocery stores.

89 — REAL ESTATE SALESMEN — Each person employed as a real estate salesman licensed under the provisions of Title 34-27-30, et seq., shall pay an annual license amount of $25.00.

90 — INSURANCE AGENTS — Each person, firm or corporation engaged in the business of acting as agent for fire and marine insurance companies shall pay a license of 1/40 of 1% of the gross commission from said business from the previous year with a minimum license of $7.50.

SECTION 3: That the Director of Revenue shall cause to be printed and bound copies of this Code for the use of Jefferson County and he shall supervise the publication

of said Code and he shall read all of the proofs, correct all manifest errors and compare the printed book with this ordinance.

SECTION 4: (a) The term "person" as used in this Code shall include an individual, a corporation, a partnership, an association, a stock company, a business trust, an unincorporated organization, and any other entity.

(b) In all cases where the amount of license tax is dependent upon the amount of business done, amount of sales, receipts, value of furniture and other equipment, stock, capital invested, number of helpers or employees, amount of space occupied, or any factor or factors whatsoever either of the same kind as the foregoing enumerations or of a different kind therefrom, it shall be the duty of the person subject to such tax to render to the Director of Revenue, on or prior to the date when such tax becomes due, a sworn statement showing the total business done, amount of sales, receipts, stock, value of furniture and other equipment, capital invested, number of helpers or employees, amount of space occupied, or other factor or factors herein above mentioned, one or several, as the case may require for the ascertainment of the classification of such person for license taxation purposes and the correct amount of license tax to which he is subject.

(c) Upon receipt of license tax based upon the classification of such person as shown by such sworn statement, the Director of Revenue shall issue appropriate license, but the issuance and grant thereof is expressly conditional upon the truth and accuracy of such sworn statement and the same shall be revocable by the Commission of Jefferson County as inadvertently and mistakenly granted and issued whenever it shall be made to satisfactorily appear to said Commission that the said

sworn statement is false or incorrect or that the holder of such license has not paid to the Jefferson County Commission the correct amount of license tax.

(d) Upon demand by the Director of Revenue, or his authorized deputy, auditor or representative, it shall be the duty of any person holding a license from Jefferson County to throw open to said Director or his authorized deputy, auditor or representative, during the business hours, all portions of his place or places of business for the purpose of enabling said Director of Revenue, or his authorized deputy, auditor or representative, to ascertain and gain such information as may be necessary or convenient for determination of the proper classification of such license holder for license taxation purposes and determination of the correct amount of license tax to which such person is subject, and, upon demand by the Director of Revenue, or his authorized deputy, auditor or representative, it shall also be the duty of any person holding a license from the County to furnish such Director of Revenue or his authorized deputy, auditor or representative, all such information as may be required for determination of the proper classification of such license holder for license taxation purposes and determination of the correct amount of license tax to which such person is subject, and to that end it shall be the duty of such person to submit to the Director of Revenue, or his authorized deputy, auditor or representative, for inspection and examination, during reasonable business hours, at such person's place of business, in the County, all books of account, invoices, papers, reports, and memoranda containing entries showing amount of purchases, sales receipts, inventory and other information from which the correct license tax classification of such person may be ascertained and the correct amount of license tax to which he is subject be determined including exhibition of bank deposit books, and bank statements, copies of

Sales Tax Reports to the State of Alabama and Jefferson County, copies of Alabama Income Tax Reports and Federal Income Tax Reports. It shall be unlawful for any license holder, or for any servant, agent or employee of such license holder, to fail or refuse to perform any duty herein imposed upon such license holder, or to obstruct or interfere with the Director of Revenue, or his authorized deputy, auditor, or representative, in obtaining information necessary or convenient for determination of the proper license classification of such license holder.

(e) Where the amount of license required to be paid for engaging in any business is graduated according to the amount of business, or the amount of gross receipts, gross purchases, gross sales, or according to the amount or value of stock on hand, and where a maximum flat sum which shall be paid as a license is provided for engaging in such business, any person engaging in such business shall be liable for the maximum license provided for engaging in such business, unless he has in his possession the records, books, papers, and reports necessary to determine the classification to which he belongs, and unless he exhibits the same for inspection as required by this section, and unless the same disclose that the person belongs in a classification lower than the classification required to pay the maximum license. Where the amount of license required to be paid for engaging in any business is graduated according to the amount of business, or the amount of gross receipts, gross purchases, gross sales, or according to the amount of value of stock on hand, and where no maximum flat sum which shall be paid for engaging in such business is provided for, then in such event if the holder of a license of the County has not in his possession or under his control in Jefferson County true and intelligible books of accounts, invoices, papers, reports or memoranda correctly reflecting the data and information necessary for deter-

mination of the classification to which he belongs for assessment of the correct amount of license tax, or if, having in his possession or under his control such books, invoices, papers, reports and/or memoranda, he shall fail or refuse to submit and exhibit the same for inspection and examination as required by this section, or if he shall fail or refuse to throw open any portion of his place or places of business to the Director of Revenue, or his authorized deputy, auditor or representative, as in this section requires, then and in either of said events it shall be the duty of the Director of Revenue to ascertain the license tax classification of such person from the best information and data obtainable and to assess against any such person the correct license tax according to the classification thus ascertained. When the classification of such person, and the amount of license tax due from him shall have been ascertained and fixed by the Director of Revenue, it shall be the duty of such Director to mail to such person notice of his determination and to demand of such person immediate payment of the amount of tax ascertained to be due from him plus penalties but less any amount such person may have theretofore paid upon the tax due from him. If the amount of tax demanded be not paid within ten days of the mailing of such demand the Director of Revenue shall notify such person by registered mail that at a time and place specified in said notice, he will apply to the Commission of Jefferson County for revocation of such person's license. At the time and place so specified such person may appear before the Commission in person and by counsel, one or both, and show cause, if any there be, why said license should not be revoked. Upon any such hearing, and for all other purposes, the decision and determination of the Director of Revenue as to classification and amount of license tax due shall be deemed cor-

rect and final, unless and until it shall be satisfactorily shown that such decision and determination is incorrect.

(f) It shall be unlawful for any person connected with the administration of this section to divulge any information obtained by him in the course of inspection and examination of the books, papers, reports and memoranda of the taxpayer made pursuant to the provision of this exception, except to the Jefferson County Commission, the Director of Revenue, the County Attorney, or others connected with the administration of this section.

(g) It shall be the right and duty of the Director of Revenue, his deputy or inspector to inspect from time to time during reasonable business hours all records, books and other papers or documents, as well as merchandise itself that is placed or stored in public warehouses in the County as well as all other places where merchandise is stored for or by some person, firm or corporation, said information obtained from such inspection and investigation to be used as an aid in determining the proper classification of the owner of said merchandise for license taxation and for fixing the amount of such license tax, and it shall be unlawful for any person, firm or corporation to impede, hinder or obstruct the Director of Revenue or his deputy or inspector in reasonable performance of his duty.

(h) For the purpose of enabling the Director of Revenue to determine (1) whether or not there is any liability for payment of a license tax, (2) the proper classification, or (3) the correct amount of license tax due, it shall be the duty of any person engaged in or carrying on any business, vocation, occupation or profession in the County, upon demand of the Director of Revenue, his authorized deputy, auditor or representative, to permit inspection during business hours of all portions of his place or places of business, to furnish by sworn statement or otherwise all information requested bearing on the

character of the business engaged in, the amount of capital invested therein, and the dollar amount of the business transacted, and to make available for inspection and examination during business hours all books of accounts, invoices, papers, reports and memoranda relating to said business, or showing the amount of purchases, sales, receipts, inventory, and such other information necessary for a determination of tax liability, classification or amount of tax, as may be demanded, including bank deposit books, bank statements, copies of sales tax reports to the State of Alabama and Jefferson County and of state and federal income tax returns. The above records shall be maintained for the three preceding calendar years prior to such examination. It shall be unlawful for any such person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty herein imposed upon such person or obstruct or interfere with the Director of Revenue, his authorized deputy, auditor or representative in carrying out the purpose of this subsection. Each day's failure or refusal to perform any duty herein imposed shall constitute a separate offense.

Section 5: (a): Where the amount of the license is based on gross annual business, gross annual receipts, gross receipts, gross sales or any other words of similar import, the terms gross annual business, gross annual receipts, gross receipts, gross sales or any other words of similar import, unless the contrary clearly appears, shall mean the entire receipts for the preceding calendar year of the business, vocation, occupation or profession engaged in, including all receipts from sales regardless of the place where the sale was solicited or placed where the contract of sale was consummated or the place of delivery, and shall include the amount of any federal excise tax, or any other tax imposed on sales or services, there may be deducted therefrom the amounts of all state,

county and municipal sales and use taxes, and also, there may be deducted therefrom the amounts of any taxes collected and paid over to the State, County or Municipality. Provided however, such gross annual business, gross annual receipts, gross receipts, gross sales shall exclude receipts from sales with delivery being made outside of the State of Alabama. Provided further that if the person, firm or corporation liable for a license under this Code, may at his or its option (1) deduct from the entire receipts the amount of receipts that were derived from the sale of merchandise or services covered by state and county license or licenses issued under Title 40, Chapter 12, Code of Alabama 1975, or (2) deduct from the amount of the license due under this Code one-half (1/2) the amount or amounts paid to the State and County for the licenses; excluding fees, interest and penalties; issued under Title 40, Chapter 12, Code of Alabama 1975. Provided further that any person, firm or corporation liable for a license under this Code regardless of whether the license is based on gross receipts or otherwise may deduct from the license due under this Code one-half (1/2) the amount or amounts paid to the State and County for licenses excluding fees, interest and penalties issued under Title 40, Chapter 12, Code of Alabama 1975 as amended.

(b) Where the amount of license is based upon the volume of receipts, or investment in inventory, plant, equipment, fixtures, rolling stock, etc., in the absence of any other specific provision therefor, the receipts or average investment referred to are those of such business for the calendar year next preceding the current license year, provided, however, that if said business did not operate the entire next preceding calendar year, then the license tax shall be based upon that amount which bears the same relationship to the actual amount of receipts or investments during such preceding part year as the en-

tire calendar year bears to such time which said business was operated during such preceding part year, and provided further that if the operation of such business did not commence until after December 31, 1988, or by subsequent December 31, then the license tax shall be based upon that amount which bears the same relationship to the actual amount of receipts or investments during such preceding part year as a 12 month period bears to such time which said business was operated during such preceding part year, and provided further, that if the operation of such business did not commence until after the 1st day of October, 1989, or any subsequent October 1, the operator thereof shall pay the minimum license for that license year, if the operation of the business does not begin until after April 1, 1990 or any subsequent April 1, the operator thereof shall pay one-half the minimum license for the remainder of the license year.

(c) Where the amount of license is based upon the average number of employees employed in the business during the calendar year next preceding the current license year and the operation of such business did not commence until the 1st day of such current year or thereafter, then the license tax for such business for such current license year shall be paid based on an affidavit given by the operator of such business, such affidavit shall state the average number of employees to be employed in the business during the current year.

Section 6: POWER TO CHANGE LICENSE: The adoption of this schedule of licenses shall not abridge the right of the Jefferson County Commission to change, alter, increase, decrease or revoke any of the above licenses at any time. And when any increase is made unless the same is paid in thirty days, the license shall be revoked and no further business carried on thereunder, nor shall it abridge the right of the Jefferson County

Commission to require a license for any business, vocation, occupation, traffic, calling or profession not included in the above schedule. The Jefferson County Commission may decrease or revise any license retroactive to October 1, of any fiscal year, if in the opinion of said Commission, said schedule is unfair or unjust.

Section 8: TERMS FOR WHICH LICENSE ISSUED: The amount of the license due hereunder by any one upon commencing business, shall not be affected or decreased by the subsequent abandonment or discontinuance of such business.

Section 9: LICENSE DEEMED A PERSONAL PRIVILEGE: (a) Every license shall be held to confer a personal privilege to transact the business, employment or profession which may be the subject of the license, and shall not be exercised except by the person, firm, or corporation licensed, unless specifically authorized by law to do so. (b) A business or privilege for which such license is issued is, under actual sale, transferred to a new ownership in which case a transfer of license may be effected by application to the Director of Revenue and the payment of a fee of One Dollar ($1.00). No transfer shall be valid until same has been endorsed across the face of the license receipt by the Director of Revenue.

Section 10: SALARIED PROFESSIONAL EMPLOYEES: When any person claims any concession on any kind of professional license provided for in this Code because of such person being either the employer or the employee, such person shall not be exempt from payment of the license provided in this Code, until both the employer and the employee have furnished to the Director of Revenue, sworn affidavits or other evidence satisfactory to the Director, setting out all the facts and conditions in regard to the employment with such facts and

conditions being as would ordinarily substantiate the employment claim.

Section 11: PLACE OF BUSINESS TO BE DESIGNATED: Any person desiring to engage in any trade, business, vocation, occupation, profession, for which a license is required and for which a fixed place of business is required shall designate the place at which said trade, business, vocation, occupation or profession is to be carried on, and the license to be issued thereunder, shall designate such place and such license shall authorize the carrying on of such trade, business, vocation, or profession only at such place. For each place at which said trade, business, vocation, occupation or profession is carried on, a separate license fee and tax shall be paid.

Section 12: EACH BUSINESS DEMANDS SEPARATE LICENSE: Any person, firm or corporation dealing in two or more of the articles or engaging in two or more of the businesses, vocations, occupations, callings or professions enumerated in Section 2 of this Code and for which a license is required of each, such person shall pay for and take out a license for each line of business, vocation, occupation, calling or profession, except as otherwise provided herein.

Section 13: PAYMENT OF LICENSE BY CHECK: Whenever a license or license receipt shall be issued in return for any check, the same shall not be valid or of any force or effect unless such check shall be duly paid upon presentation to the drawee.

Section 14: LICENSE TO BE EXHIBITED: Each license shall be posted in a conspicuous place, where such business, vocation, occupation or profession is carried on, and the holder of such license shall immediately show such license to the Director of Revenue, or his

deputy, or any law enforcement officer of the County upon being so requested by such Director, deputy or officer so to do.

Section 15: All licenses under this Code shall be due and payable on the first day of October, 1989, for the County fiscal year, or from the day on which business is commenced if after October 1, 1989, for the remainder of the fiscal year and on October 1, for each subsequent County fiscal year. The payment for the fiscal year shall be delinquent on November 1, 1989 and each November 1, thereafter for subsequent fiscal years. If said licenses are not paid before becoming delinquent a penalty shall be collected in an amount equal to 15% of the license due for such period, and also a citation fee of $1.50 for each license listed on the citation and served on a delinquent. But the payment of any and all licenses due may be enforced immediately after the due date thereof. The Director of Revenue shall have the authority to waive delinquent penalty and interest for a good and sufficient cause shown.

Section 16: No provision of this Code shall be applied: (a) so as to impose any unlawful tax or unlawful burden on interstate commerce or on activity of the State or Federal governments; or (b) in any manner which is repugnant to or violates any provision of the United States or Alabama constitutions. Nor shall the provisions of this Code apply to any business, vocation, occupation, calling or profession which has been specifically exempted under Act 406 as passed in the 1967 Regular Session of the Legislature and approved by the Governor on September 7, 1967.

Section 17: PROVISIONS SEPARABLE AS TO INDIVIDUALITY, ETC.: Should any section or provision of

this Code be for any reason held void or invalid, it shall not affect the validity of any other section or provision hereof which is not itself void or invalid.

Section 18: UNLAWFUL TO DO BUSINESS BEFORE OBTAINING LICENSE: It shall be unlawful for any person to engage in any business or vocation in the County without first having procured a license therefor, and each day during which said business or occupation is so engaged in shall constitute a separate offense.

Section 19: (a) Any lawful license issued to any person, firm or corporation to conduct any business shall be subject to revocation by the Jefferson County Commission for the violation by the licensee, his agent, servant, or employee, of any provision of this Code or of any ordinance of the County, or of any statute of the State of Alabama, relating to the business for which such license is issued: and shall also be subject to revocation by the Commission if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the County or any criminal law of the State of Alabama; and shall also be subject to revocation by the Jefferson County Commission if, in connection with the issuance or renewal of any license, the licensee or his agent filed any application, affidavit, statement, or other document containing any untrue or misleading statement or omission of a material fact.

(b) The conditions hereinabove set forth as grounds for the revocation of a license shall constitute grounds for the Jefferson County Commission refusing to renew a license.

(c) The Commission shall set a time for hearing on the matter of revoking or refusing to renew a license; and a notice of such hearing shall be given to the licensee, or

the applicant for renewal, as the case may be, at least one day before the day set for said hearing. At the hearing the Jefferson County Commission shall hear all evidence offered by any party and all evidence that may be presented bearing upon the question of revocation or the refusal of renewal, as the case may be.

Section 20: FALSE OATH TO PROCURE LICENSE: It shall be unlawful for any person to give, submit, exhibit or present to the County, the Director of Revenue, or to any license inspector or collector of the County, any false, deceptive or misleading statement, affidavit, certificate, book or record entry, or other document relating to the amount of capital invested, the value of goods, stocks, or merchandise, the amounts or volume of sales, receipts or commissions, the number of employees, the number of vehicles used, or any other data, record of information required by the License Code of the County to determine the amount of license due.

Section 21: Any person liable for any license hereunder who neglects or refuses to pay the same, the amount thereof, including penalty, together with any cost which may accrue in addition thereto shall be a lien in favor of Jefferson County, Alabama, upon all property and the rights to property, real or personal, belonging to such person. Such lien shall not be valid against any mortgagee, purchaser in the usual course of trade or conventional judgment creditor with an actual money judgment or a decree of some Court of Law or Equity until after the time a notice of such lien has been filed by the Director of Revenue in the Office of the Judge of Probate of the County in which such property, real or personal, is located.

Section 22: REFUNDS, ADDITIONAL LICENSES: (a) Any person who by mistake of fact or law has paid to the Director of Revenue money that was not due from him for a license or an amount in excess of that required by law for the business, vocation, occupation or profession to be carried on by such person under the license, shall be entitled to have refunded the money incorrectly paid, less the issuance fee and any commission which may he retained by the Director of Revenue.

(b) Such application for refund must be made within two years from the date of such erroneous or excessive payment.

(c) In case of the issuance of a license for less than the amount due therefor upon payment of the additional amount due for such license an additional license may be issued in such manner as to allow credit for the amount previously paid by the licensee and there shall be endorsed on the face of such additional license the words "additional to license #_____.

Section 23: DISPOSITION OF MONIES BY DIRECTOR OF REVENUE: Within twenty days after the end of each month the Director of Revenue must remit to the County Treasurer all the money received by him for licenses.

Section 24: Any person violating any provision of this Code shall upon conviction be punished within the limits of and as provided by law.

Section 25: This License Code of Jefferson County, Alabama, shall become effective as a law and ordinance of Jefferson County on October 1, 1989, following its adoption and approval by Ordinance of the Jefferson County Commission.

CODE OF ALABAMA 1975

TITLE 11
COUNTIES AND MUNICIPAL CORPORATIONS

CHAPTER 51
TAXATION

ARTICLE 2
LICENSE TAXES

§ 11-51-90. Licensing of conduct of trade, business, profession, etc., in municipality authorized generally; licensing as to persons, etc., engaged in business in connection with interstate commerce; purposes for which licensing power conferred by division may be exercised.

(a) Municipalities shall have the following powers:

(1) To license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the Constitution or laws of the state which may be engaged in or carried on in the city or town.

(2) To fix the amount of licenses, the time for which they are to run, not exceeding one year, to provide a penalty for doing business without a license, and to charge a fee of not exceeding five dollars ($5) for issuing each license.

(3) To require sworn statements as to the amount of capital invested, value of goods or stocks, or amounts of sales or receipts where the amount of the license is made to depend upon the amount of capital invested, value of goods or stocks, or amount of sales or receipts and to punish any person or corporation for failure or refusal to furnish sworn statements or for giving of false statements in relation thereto.

(b) The license authorized by subsection (a) of this section as to persons, firms, or corporations engaged in business in connection with interstate commerce shall be confined to that portion within the limits of the state and where the person, firm, or corporation has an office or transacts business in the city or town imposing the license.

(c) The power to license conferred by this division may be used in the exercise of the police power as well as for the purpose of raising revenue, or both. (Code 1907, § 1339; Acts 1909, No. 121, p. 121; Code 1923, § 2154; Code 1940, T. 37, § 735; Acts 1994, No. 94-644, § 1).

CITY OF BIRMINGHAM, ALABAMA

ORDINANCE NO. 70-75

AN ORDINANCE TO PROVIDE FOR AN OCCUPATIONAL LICENSE FEE FOR PERSONS ENGAGED IN TRADES, OCCUPATIONS AND PROFESSIONS, AND THE METHOD OF REPORTING AND COLLECTING THE SAME.

BE IT ORDAINED By the Council of the City of Birmingham, Alabama, as follows:

Section 1. DEFINITIONS. That the following words, when used in this ordinance, shall have the meaning ascribed to them, except where the context clearly indicates or requires a different meaning:

(a) The word "Person" shall mean any natural person. Whenever the word "Person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

(b) The words "Trade, Occupation and Profession" shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within the City of Birmingham, Alabama, by any clerk, laborer, tradesman, manager, official or other employee, including any nonresident of the City of Birmingham who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer

and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, but they shall not mean or include domestic servants employed in private homes or businesses, professions or occupations for which license fees are required to be paid under any General License Code of the City.

(c) The words "Trade, Occupations and Professions" shall also mean and include the holding of any kind of office or position, either by election or appointment, by any federal, state, county or city Officer or employee where the services of such official or employee are rendered within the City of Birmingham.

(d) The word "Employee" shall mean and include any person engaging in or following any trade, occupation or profession within the meaning of subsection (b) of Section 1 of this ordinance.

(e) The word "Employer" shall mean and include any person, business, firm, corporation, partnership, association or any other kind of organization who or that employs any person in any trade, occupation or profession in the City of Birmingham within the meaning of subsection (b) of Section 1 of this ordinance.

(f) The words "Gross Receipts" and "Compensation" shall have the same meaning, and both words shall mean and include but not be limited to the total of the following items which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any trade, occupation or profession, including any kind of deductions before "Take Home" pay is received:

Cash Compensation	**Non-Cash Compensation**
Salary	Reimbursements for expenses above actually incurred
Wages	
Bonuses	Value of Personal Use of Company Owned Vehicle
Incentive Pay	Value of Personal Use of Clubs
Overtime Pay	Cost of more than $50,000 group life insurance
Commissions	Non-Deminimus Awards in excess of $100.00
Severance Pay	

The words "Gross Receipts" and "Compensation" shall also include the amount which an employee elects to defer pursuant to a salary reduction agreement under a retirement plan or deferral arrangement (including but not limited to 26 United States Code Sections 401(k) or 403(b) plans, but not Section 125 Cafeteria Plans).

The words "Gross Receipts" and "Compensation" shall not include the following items:

Employer Paid Insurance
Educational Assistance
Employee Discounts
Stock Options
Stock Grants Subject to a Substantial Risk of Forfeiture under 26 United States Code Section 83
Retirement Pay
Distributions from Qualified Pension, Profit Sharing, Thrift, Stock Bonus, and Other Deferred Compensation Plans Qualified under 26 United States Code Section 401(a)
Distributions form Non-Qualified Deferred Compensation Plans
Section 125 Cafeteria Plans
Dependent Child Care Assistance
Payment of Parking by Employer
Students Grant/Scholarships
Death Benefits
Unemployment Compensation

Expenses incurred in moving Employer Contributions to NonQualified Deferred Compensation Plans
Employer Contributions to Qualified Pension, Profit Sharing, Thrift, Stock Bonus and Other Deferred Compensation Plans Qualified under 26 United States Code Section 401(a)
Strike Benefits
Workmen's Compensation
Actural Expenses Incurred in the Employer's Behalf

(subsection (f) of section 1 amended by Ord. No. 92-280 adopted November 03, 1992)

(g) The word "Licensee" shall mean and include any person required to file a return or to pay a license fee under this ordinance.

(h) The word "City" shall mean the City of Birmingham, Alabama.

(i) The words "Director of Finance" shall mean the Director of Finance of the City of Birmingham.

(j) The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

Section 2. LICENSE FEES REQUIRED. It shall be unlawful for any person to engage in or follow any trade, occupation or profession as defined in Section 1 within the City on and after the 1st day of December, 1970 without paying license fees for the privilege of engaging in or following such trade, occupation or profession, which license fees shall be measured by one per centum (1%) of the gross receipts of each such person.

Section 3. WHERE WORK DONE OR SERVICES PERFORMED BOTH WITHIN AND/WITHOUT THE CITY. In cases where compensation is earned as a result of work done or services performed both within and

without the city, the license fees required under this ordinance shall be computed by determining upon the oath of the employer, or if required by the Director of Finance upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the City.

Section 4. EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS. Each employer shall deduct from each payment due each employee the amount of the license fees measured by one per centum (1%) of the compensation due each employee beginning on the 1st day of December, 1970. The payments required to be made on account of such deductions by employers shall be made monthly to the City for the monthly periods ending January 31, February 28, March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30, and December 31st of each year, on or before the twentieth day of the, month next following the end of each such monthly period, and each employer shall at the same time make a return in connection therewith on a form made available to such employer by the Director of Finance at the office of the Director of Finance, provided that, if the total amount deducted from payments made to or due all employees of an employer is less than fifty (50.00) dollars during each calendar month of the previous calendar year, then such employer may elect, for the current calendar year, to remit such deductions to the City for the quarterly periods ending March 31st, June 30th, September 30th and December 31st of such following calendar year, on or before the twentieth day of the month next following the end of each such quarterly period, and each such employer shall at the same time make a return in connection therewith on a form made available to such employer by the Director of Finance at the office of the Director of Fi-

nance. Provided, however, that the failure or omission by any employer to deduct such license fees shall not relieve an employee from the payment of such license fees and compliance with the requirements for making returns as provided in this Ordinance, or with any regulations promulgated under this Ordinance. Each employer shall file in the office of the Director of Finance on or before January 31, 1971, a return on a form made available by said Director of Finance, at the office of said Director of Finance, which return shall show the gross amount of compensation of each employee, the amount of license fees deducted and paid by such employer for all or any part of the period from and including December 1, 1970, and the last known address of each such employee, and, on or before January 31st of each year thereafter a return showing the gross amount of compensation of each employee and the amount of the license fees deducted and paid by the employer, during all or any part of the preceding calendar year. Each employer shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employer for not less than (5) years subsequent to the date such compensation was earned.

Section 5. RETURNS TO BE FILED BY EMPLOYEES. When a monthly or quarterly return, as required by Section 4 hereof is not filed by an employer and the license fees are not paid to the City by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the Director of Finance on or before the 1st day of the second month next following the end of each such monthly or quarterly period, showing in said return his gross receipts subject to license fees for such month or quarter, and he shall also file a return with the Director of Finance on or before January 31st of each year thereafter in which his employer has failed to file any monthly or quarterly return required in the preceding calendar year, showing on said return the gross receipts subject to license fees during the preceding calendar year. If for any reason all license fees of a person subject to the provisions of this Ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this Section on a form obtainable at the office of the Director of Finance. In addition to the gross receipts earned by him, such return shall show such other pertinent information as may be required by the Director of Finance. Each person making a return required by the Section shall, at the time of filing thereof, pay to the City the amount of license fees due under this Ordinance; provided, however, that any portion of the license fees deducted at the source shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing said return. Each employee shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employee for not less than five (5) years subsequent to the date such compensation was earned.

Section 6. DUTIES OF THE DIRECTOR OF FINANCE. It shall be the duty of the Director of Finance to collect and receive all license fees imposed by this ordinance and to keep records showing the amounts received by him from each employer. All moneys received by the Director of Finance shall be deposited in a duly approved depository and credited to the General Fund of the City of Birmingham, Alabama. The Director of Finance shall prescribe printed forms for use by persons subject to the provisions of this ordinance and shall make such forms available at his office for use by such person.

Section 7. INVESTIGATIVE POWERS OF THE DIRECTOR OF FINANCE. The Director of Finance or any agent or employee designated by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any licensee or supposed licensee, in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fees due under the terms of this ordinance by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the Director of Finance, or to his duly authorized agent or employee, the means, facilities and opportunity for the making of such examination and investigation. The Director of Finance is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return, and to this end he may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation.

Section 8. REGULATIONS MAY BE PROMULGATED. The Director of Finance may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

Section 9. INFORMATION TO BE CONFIDENTIAL. Notwithstanding any ordinances to the contrary, any information gained by the Director of Finance or any other official or agent or employee of the City as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes, or in accordance with proper judicial order, or the enforcement of this ordinance, and any person or agent divulging such information, except as herein permitted, shall upon conviction be subject to a fine of not more that $100 or to imprisonment of not exceeding thirty (30) days, or to both such fine and imprisonment.

Section 10. INTEREST AND PENALTIES

(a) All license fees imposed by this ordinance which are delinquent, that is, which remain unpaid after they become due shall, subject to the provisions hereinafter set out, bear interest at the rate of twelve percentum (12%) per annum, and any person who has failed to pay such license fees when the same became due shall, subject to the provisions hereinafter set out, also be charged a penalty of ten percentum (10%) of the amount of such unpaid license fees. Any person or employer who fails or refuses to withhold any license fees payable under this ordinance, or who fails to pay such fees after withholding the same to the City at the time it is due, as provided under the provisions of Section 4 hereof, shall become liable to the City for such fees, as well as for the interest thereon at the rate of twelve percentum (12 %) per annum, and for the aforesaid penalty. Provided, however, that the minimum penalty imposed against such person or employer shall be Three Dollars ($3.00). Provided the Director of Finance, if a good and sufficient reason is shown for the failure to pay the tax within the time required, may waive or remit the penalty and interest, or a portion of either, upon payment of the tax due.

(b) Any person or employee who shall fail, neglect or refuse to pay a license fee as by this ordinance required, or any employer who shall fail to withhold said license fees, or to pay over to City such license fees, penalties or interest imposed by this ordinance, or any person required to file a return under the provisions of Section 5 of this ordinance, who shall fail, neglect or refuse to file such return, or any person or employer who shall refuse to permit the Director of Finance or any agent or employee designated by him, in writing, to examine his books, records and papers for any purpose authorized by this ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee, shall upon conviction be subject to punishment within the limits of and as provided by Section 1-6 of the General Code of the City of Birmingham, 1964, for each offense. Such punishment shall be in addition to the penalties imposed under subsection (a) of this section. (Subsection (b) of Section 10 amended by Ord. No. 73-77 adopted June 12,1973.)

Section 11. EXTENSION OF TIME FOR MAKING RETURN. The Director of Finance, for good cause, may extend the time for making any return required under the provisions of this ordinance, but the time for filing any such return shall not be extended for a greater period than thirty (30) days from the day such return is due to be made and shall not prevent penalty and interest from accruing during the period of such extension.

Section 12. USE OF LICENSE FEES. All money derived from license fees under the provisions of this ordinance shall be paid to City and placed to the credit of the General Fund of the City of Birmingham, and shall be used and expended as authorized by law.

Section 13. SEVERABILITY. The provisions of this ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer or licensee or class or persons, shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

Section 14. REPEAL OF ORDINANCES. All ordinances or parts of ordinances in conflict with this ordinance are to the extent of such conflict hereby repealed.

Section 15. EFFECTIVE DATE. This ordinance shall be in full force and effect on and after December 1, 1970, and from year to year thereafter, until repealed.

CITY OF BIRMINGHAM, ALABAMA

LICENSE CODE

Adopted by Ordinance No. 91-295

Section 1. The following is hereby declared to be the schedule of licenses for the calendar year commencing January 1, **1992** through January 1, **1997** for divers businesses, vocations, occupations and professions engaged in or carried on, in the City of Birmingham in said calendar year, and each and every person, firm, company or corporation engaged in any business, vocation, occupation or profession enumerated herein, in said calendar year shall pay and take out such licenses in such sums as are herein provided:

* * *

12— ARCHITECTS—

Each person, firm or corporation where gross annual business is

less than $5,000	$30.00
$5,000 and less than $10,000	50.00
$10,000 and less than $17,500	75.00
$17,500 and less than $25,000	100.00
$25,000 and less than $32,500	125.00
$32,500 and less than $40,000	150.00
$40,000 and less than $50,000	200.00
$50,000 and less than $75,000	250.00
$75,000 and less than $100,000	300.00
$100,000 and less than $125,000	350.00
$125,000 and less than $150,000	400.00
$150,000 and less than $175,000	450.00
$175,000 and less than $200,000	500.00
$200,000 and less than $250,000	550.00
$250,000 and less than $300,000	600.00

$300,000 and less than $400,000	700.00
$400,000 and less than $500,000	800.00
$500,000 and less than $600,000	900.00
$600,000 and less than $800,000	1,000.00
$800,000 and less than $1,000,000	1,200.00
$1,000,000 and less than $1,400,000	1,400.00
$1,400,000 and less than $2,000,000	1,800.00
$2,000,000 and less than $2,600,000	2,200.00
$2,600,000 and less than $3,200,000	2,400.00
$3,200,000 and over	2,500.00

14— ATTORNEYS—

(a) Each person, or where a partnership (but not including associations as defined in Subdivision (b) herein), each member of partnership, where gross professional fees from services rendered within the City of Birmingham during the year next preceding are

less than $5,000	$30.00
$5,000 and less than $10,000	50.00
$10,000 and less than $15,000	75.00
$15,000 and less than $20,000	100.00
$20,000 and less than $25,000	125.00
$25,000 and less than $30,000	150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

(b) Each professional member or associate of an unincorporated association (as defined by Act 865 of the 1961 Session of the Legislature of Alabama), where the total remuneration for services rendered within the City of Birmingham during the year next Legislature of Alabama) or a professional corporation (as defined by Act 514 of the 1983 Session of the Legislature of Alabama), where the total remuneration of services rendered within the City of Birmingham during the next year preceding are

less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

The gross remuneration of such professional member or associate, for the purpose of this section, shall be computed by dividing the gross professional fees from services rendered within the City of Birmingham of such unincorporated association by the total number of professional members or associates of such unincorporated association.

* * *

16—AUDITORS, ACCOUNTANTS AND BOOKKEEPERS—

(a) Each person, or where a partnership (but not including associations as defined in Subdivision (b) herein), each member of partnership, where gross professional fees from services rendered within the City of Birmingham during the year next preceding are
less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

(b) Each professional member or associate of an unincorporated association (as defined by Act 865 of the 1961

Session of the Legislature of Alabama), or a professional corporation (as defined by Act 514 of the 1983 Session of the Legislature of Alabama), where the total remuneration for services rendered within the City of Birmingham during the year next preceding are
less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

The gross remuneration of such professional member or associate, for the purpose of this section, shall be computed by dividing the gross professional fees from services rendered within the City of Birmingham of such unincorporated association by the total number of professional members or associates of such unincorporated association.

* * *

68— CONTRACTORS—

Each person engaged in the business of constructing houses or buildings on contact, or who constructs two or more houses a year, whether on contract or otherwise, or who maintains an office in Birmingham used in connection with such construction outside of Birmingham, shall pay a license of $100.00

69— CONTRACTORS—

Each person contracting for or engaged in the business of installing or repairing air conditioning, furnaces, making furnace repairs, doing sheet and tin metal work,

steam heating, hot water heating, and steam fitting, any one or all, where gross receipts are:

Less than $50,000	$50.00
$50,000 and less than $100,000	75.00
$100,000 and less than $200,000	100.00
$200,000 and less than $300,000	200.00
$300,000 and less than $400,000	300.00
$400,000 and less than $500,000	400.00
$500,000 and less than $600,000	500.00
$600,000 and less than $700,000	600.00
$700,000 and less than $800,000	700.00
$800,000 and less than $900,000	800.00
$900,000 and less than $1,000,000	900.00
$1,000,000 and over	1,000.00

With a minimum license of $50.00 in any case.

No license will be issued to heating and air condition contractor until applicant has obtained State of Alabama Permit.

* * *

98—ENGINEERS, CIVIL, MINING, CONSTRUCTION, ELECTRICAL, ESTIMATING, CONSULTING, INDUSTRIAL RADAR OR MECHANICAL ENGINEER OR SURVEYOR—

(a) Each Person, or where a partnership [but not including associations as defined in Subdivision (b) hereon], each member of partnership, where gross professional fees from services rendered within the City of Birmingham during the year next preceding are

less than $5,000	$30.00
$5,000 and less than $10,000	50.00
$10,000 and less than $15,000	75.00
$15,000 and less than $20,000	100.00
$20,000 and less than $25,000	125.00
$25,000 and less than $30,000	150.00

Plus an amount equal to 4/10 of 1% of those gross receipts in excess of $30,000, but in no event shall the license under this schedule be for an amount in excess of $5,000.

(b) Each professional member or associate of an unincorporated association (as defined by Act 865 of the 1961 Session of the Legislature of Alabama), or a professional corporation (as defined by Act 514 of the 1983 Session of the Legislature of Alabama), where the total remuneration for services rendered within the City of Birmingham during the year next preceding are

less than $5,000	$30.00
$5,000 and less than $10,000	50.00
$10,000 and less than $15,000	75.00
$15,000 and less than $20,000	100.00
$20,000 and less than $25,000	125.00
$25,000 and less than $30,000	150.00

Plus an amount equal to 4/10 of 1% of those subject remunerations in excess of $30,000.

The gross remuneration of such professional member or associate, for the purpose of this section, shall be computed by dividing the gross professional fees from services rendered within the City of Birmingham of such unincorporated association by the total number of professional members or associates of such unincorporated association.

* * *

186— OPTOMETRIST—

Each person, firm, corporation, association, or where a partnership, each member of partnership, where gross professional fees from services rendered within the City of Birmingham during the year next preceding are:

less than $5,000	$30.00
$5,000 and less than $10,000	50.00

$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

This license is not to include the business of manufacturing and/or grinding lenses or the selling of merchandise other than manufacturing, grinding of lenses or the selling or furnishing of merchandise by an optometrist in the exercise of his practice as an optometrist.

* * *

198—PHYSICIANS, SURGEONS, DENTISTS, PSYCHOLOGISTS, PSYCHIATRISTS, OSTEOPATHS, CHIROPRACTORS OR CHIROPODISTS—

(a) Each person, firm or corporation, or where a partnership [but not including associations as defined in subdivision (b) herein], each member thereof, where gross fees, charges or remuneration for professional services rendered or provided within the City of Birmingham during the year next preceding are:

less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees, charges or remuneration in excess of $30,000.

(b) Each professional member or associate of an unincorporated association (as defined by Act 865 of the 1961 Session of the Legislature of Alabama), or a professional

corporation (as defined by Act 514 of the 1983 Session of the Legislature of Alabama), where the total fees, charges or remuneration for services rendered within the City of Birmingham during the year next preceding are

less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of those subject remunerations in excess of $30,000.

The gross remuneration of such professional member or associate, for the purpose of this section, shall be computed by dividing the gross professional fees from services rendered within the City of Birmingham of such unincorporated association by the total number of professional members or associates of such unincorporated association.

* * *

246—VETERINARY SURGEON—

(a) Each person, or where a partnership (but not including associations as defined in subdivision (b) herein, each member of partnership where gross professional fees from services rendered within the City of Birmingham during the year next preceding are

less than $5,000 ..... $30.00
$5,000 and less than $10,000 ..... 50.00
$10,000 and less than $15,000 ..... 75.00
$15,000 and less than $20,000 ..... 100.00
$20,000 and less than $25,000 ..... 125.00
$25,000 and less than $30,000 ..... 150.00

Plus an amount equal to 4/10 of 1% of subject professional fees in excess of $30,000.

(b) Each professional member or associate of an unincorporated association (as defined by Act 865 of the 1961 Session of the Legislature of Alabama), or a professional corporation (as defined by Act 514 of the 1983 Session of the Legislature of Alabama), where the total remuneration for services rendered within the City of Birmingham during the year next preceding are

less than $5,000	$30.00
$5,000 and less than $10,000	50.00
$10,000 and less than $15,000	75.00
$15,000 and less than $20,000	100.00
$20,000 and less than $25,000	125.00
$25,000 and less than $30,000	150.00

Plus an amount equal to 4/10 of 1% of those subject remunerations in excess of $30,000.

The gross remuneration of such professional member or associate, for the purpose of this section, shall be computed by dividing the gross professional fees from services rendered within the City of Birmingham of such unincorporated association by the total number of professional members or associates of such unincorporated association.

* * *

NO. 95-386

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

JASON RICHARDS and FANNIE HILL,

Petitioners,

v.

JEFFERSON COUNTY, ALABAMA and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,

Respondents.

DECLARATION OF RANDY GODEKE

(i) My name is Randy Godeke, and I am over 21 years of age.

(ii) I have been employed as Director of Revenue by Respondent, Jefferson County, Alabama, since June 29, 1991. By virtue of my official position, I have personal knowledge of the facts declared herein, and I am authorized to make this declaration.

(iii) As Director of Revenue for Jefferson County, I am responsible for the collection of all tax revenues, other than property taxes, of Jefferson County, including business license and occupational taxes.

(iv) An occupational tax (the "occupational tax") is levied by Jefferson County pursuant to Ordinance No. 1120, adopted on September 29, 1987.

(v) Section 4 of Ordinance No. 1120 requires each employer whose employees are subject to the occupa-

tional tax to "file in the office of the Director of Revenue on or before January 31, of each year a return... which return shall show the gross amount of compensation of each employee, the amount of license fees deducted and paid by such employer for all or any part of the preceding calendar year. . . ."

(vi) Section 6 of Ordinance No. 1120 states that the Director of Revenue shall "keep records showing the amounts received by him from each employer."

(vii) Pursuant to Section 9 of Ordinance No. 1120, subject to certain exceptions, information regarding individual employees is required to be kept confidential. However, in the regular course of business, the Department of Revenue develops selective statistics for certain representative employers, including the total number of employees, the gross wages paid by the employer, the amount of wages upon which the occupational tax was withheld, the percentage of gross wages subject to the occupational tax, and, where applicable, the reason or reasons that certain employees of the employer were not subject to the occupational tax. Such statistics are maintained by my office in the regular course of business and are public records; they are available upon request for inspection by the public.

(viii) Attached hereto as Exhibit A to this Declaration is a compilation of statistics for the 1994 calendar year pertaining to representative employers in various categories of businesses, industries and professions. These statistics are based on the returns submitted by such employers for the 1994 calendar year, which is the latest year for which such statistics have been developed and compiled by my office. The compilation—based on the legally required returns filed by employers, as translated to public records—is incorporated in, and adopted as a part of, this Declaration.

(ix) The compilation reflected by Exhibit A presents various categories of businesses, industries and professions and representative companies or firms within each such category, identifying for each such company or firm the total number of W-2 tax returns filed for employees of such company or firm during 1994, the gross wages paid by such employer in that year, the amount of wages that were subject to the occupational tax, the percentage of the gross wages subject to the occupational tax, and a code explaining, where applicable, the reasons that the occupational tax applied to less than 100% of the gross wages paid by such company or firm.

(x) This Declaration is made under penalty of perjury.

/s/ Randy Godeke
RANDY GODEKE
Director of Revenue
Jefferson County, Alabama

EXHIBIT A
TO
DECLARATION OF RANDY GODEKE

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
Utilities:					
Alabama Power	4051	141,883,561	117,458,798	83%	A
Energen	959	39,326,769	33,199,147	84%	B
B'ham Water Wks	661	14,171,123	12,397,014	87%	B
BellSouth Telecom	8075	44,099,229	33,110,079	75%	C
BellSouth Comm	182	5,056,109	2,025,607	40%	B
Southern Co. Serv	513	25,402,145	23,029,098	91%	B
Railroads:					
CSX Railroad	196	7,076,634	4,005,570	57%	B
Norfolk Southern	302	11,317,136	9,541,231	84%	B
Banks:					
AmSouth	2416	82,666,028	82,666,028	100%	
First Alabama	1474	22,112,586	22,112,586	100%	

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
SouthTrust	1900	35,936,765	35,936,765	100%	
Compass	2068	47,547,306	47,547,306	100%	
Synovus Mtge Corp	14	273,636	273,636	100%	
Nat'l Bank of Com	569	6,126,220	6,126,220	100%	
Colonial	287	6,021,484	6,021,484	100%	
Insurance Companies:					
Blue Cross	2020	61,263,846	55,736,229	91%	A
Liberty National	936	17,500,580	15,622,782	89%	A
Protective Life	850	20,664,678	19,042,111	92%	A
State Farm Mutual	791	25,077,876	24,416,714	97%	B
Abstract Companies:					
Alabama Title	42	677,373	677,373	100%	
Lawyers Title	21	531,653	357,690	67%	F
Doctors Offices:					
UAB Health Found. & Kirklin Clinic	2708	82,421,543	28,606,920	35%	F
Norwood Clinic	626	35,802,699	9,272,532	26%	F

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
Accounting Firms:					
Arthur Anderson	52	1,491,390	221,635	15%	F
Ernst & Young	159	4,878,589	687,516	14%	F
Ice Cream Manufact:					
Barber's Dairy	558	11,329,290	10,608,761	94%	B
Baker & Sons	135	3,611,930	2,719,066	75%	B
Trailers, Road Mach:					
Thompson Tractor	430	16,900,119	15,978,064	95%	B
Embalmers:					
Johns-Ridout	36	505,479	505,479	100%	
Engineering Firms:					
BE&K Engineers	223	11,404,579	9,123,131	80%	A
Engineer Service	53	1,733,104	1,200,130	69%	F
Architectural Firms:					
Harold L. Foshee	2	116,278	10,968	9%	F

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
David L. Preacher	5	110,252	55,252	50%	F
Surroundings, Inc.	5	87,280		0%	F
Giattina Fisher	44	1,333,331	444,713	33%	A
Law Firms:					
Bradley, Arant	225	7,379,503	4,219,401	57%	F
Haskell Slaughter	87	5,423,228	812,170	15%	A
Sirote Permut	279	12,236,248	5,280,977	43%	F
Baxley Dillard	12	125,162	125,162	100%	E
Auto Repair Shops:					
Auto & Truck Rpr	9	183,807	183,807	100%	
Bates Western Aut	20	205,374	205,374	100%	
Doss Auto Rpr	12	194,734	194,374	100%	
Bowling Alleys:					
Pine Bowl	6	40,870	40,870	100%	
Vestavia Bowl	77	230,648	230,648	100%	

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
Delicatessens:					
Sophia's Deli	6	44,011	44,011	100%	
Dixie's Deli	32	104,920	104,920	100%	
Golf Courses:					
Old Overton Club	29	73,216	73,216	100%	
Quail Ridge	35	179,794	179,794	100%	
Glass Salesmen:					
Martin Glass Co.	13	56,487	31,308	55%	B
Cassady & Self	25	830,277	830,277	100%	
Innkeepers:					
Americas Best Inn	66	210,470	210,470	100%	
Holiday Inn Airpt	100	1,171,124	1,171,124	100%	
Laundries & Dry Cl:					
University Coin L	21	42,365	42,365	100%	
Flamingo Dry Cln	83	396,232	392,232	100%	

Employer	Number of Employees	Gross Wages	Wages Subject to Occupatoinal Tax	Percentage of Wages Subject to Occupational Tax	Code
Plumbers/Steamfitt:					
Acton Plmbg & Htg	21	312,150	312,150	100%	
Baker Plumbing	7	41,622	41,622	100%	
Peddlers/Itin Vndr:					
Global Coffee Ser	8	240,877	240,877	100%	
Larry's Rag Co	33	209,153	209,153	100%	

CODES EXPLAINING REASONS WHY WAGES ARE NOT SUBJECT TO OCCUPATIONAL TAX:

A — Professional licenses & out-of-county work
B — Out-of-county work
C— Out-of-county work & pension distributions
D — Attorneys on a separate payroll
E — Attorneys not reported to county
F — Professional licenses
G — Business located in another county

A History of

EDUCATIONAL FINANCE in ALABAMA

1819-1986

Ira W. Harvey

CHAPTER IV.

THE ALABAMA SPECIAL EDUCATIONAL TRUST FUND (1927 -1987)

THE 1927 QUADRENNIUM

Financial Conditions of Public Education, 1927.

Despite provisions of the Constitution of 1901 to provide educational financing through the Public School Fund to meet the constitutional mandate to "establish, organize and maintain a liberal system of public schools throughout the State for the benefit of all children thereof between the ages of seven and twenty-one years," it was obvious that the Public School Fund was inadequate (Constitution of 1901, Section, 256). The following revenues accrued to the Public School Fund:

1. The annual interest at six per cent on all sums of money which have heretofore been or which may hereafter be received by the State, or to the several townships thereof, valueless sixteenth section fund, and school indemnity fund for school purposes.

2. The annual interest at four per cent on that part of the surplus revenue of the United States deposited with the State under the act of Congress approved June 23, 1836.

3. All annual rents, incomes, and profits or interest arising from the proceeds of sales of such lands as may hereafter be given by the United States, or by this State, or by individuals, for the support of the public schools of the State.

4. All such sums as may accrue to the State as escheats the same to be applied to the support of the public schools during the scholastic year next ensuing the receipt in the State treasury.

5. The net amount of poll tax that may be collected in the State; poll tax collected in every county to be retained therein for the support of the public schools thereof and distributed and disbursed as provided in this chapter.

6. Licenses which are by law required to be paid into the school fund of any county to be promptly paid by the Judge of Probate or other person collecting the same to the custodian of public school funds of the county or district, to be expended for the benefit of the public schools of each county.

7. A special annual tax of thirty (3) cents on each one hundred dollars worth of taxable property in this State.

8. A further sum or sums to be appropriated by the Legislature for each scholastic year (School Code of 1927, Section 9).

Of the revenue sources of the Public School Fund, the interest in items (1) and (2), as well as the special appropriations of item (8), was paid from the General Fund. The net amount from use of lands, item (3), from escheats, item (4), and from poll tax, item (5), was small.

Therefore, only the statewide 3.0 mill property tax actually provided significant revenue to the Public School Fund.

At the local level, constitutional taxes consisted of the 1.0 mill and 3.0 mill taxes to be levied at the county level. However, these were not mandatory unless approved by the local taxpayers. A district property tax of 3.0 mills could also be levied with the consent of the voters and only if the 3.0 mill county tax was levied first. Therefore, the only significant funding at the local level was also based on the property tax.

Many different funds had been established since 1901, with the majority of these receiving revenues through the General Fund. And the major source of revenue for the General Fund was again the property tax. Such heavy reliance upon the property tax, coupled with the state's efforts to create a statewide system of elementary and secondary schools with a minimum seven-month term, placed undue stress on the property tax. While the growth in property tax was certain, it was slow and did not have the growth potential to meet all needs of education. Therefore, the 1927 legislature was forced to look elsewhere to meet rising needs of both elementary-secondary education and higher education.

The Seven-Month School Term, 1927

A major campaign issue in the gubernatorial election of 1927 had been the problem of providing a uniform seven-month school term for all children in Alabama. There had appeared no argument against the seven-month school term, only disagreement regarding the means of financing it. This problem was fully documented in the preceding chapter and will not be discussed here. In order to accomplish the seven-month school term, two factors had to be addressed: one was the inadequate revenue available to education; the second

was the problem of how to provide funds for the poorer counties so as to make the money available to schools more nearly equal throughout the state. Previously (1919), the Revolving Fund of $100,000 annually had been made available to promote equalization; this amount was grossly inadequate:

> The Joint Committee on Education of the Legislature of 1923 unanimously recommended increasing this fund to a million dollars. More recent studies show that in order to carry out an equalization program an even larger sum would be necessary. It would require not less than one and one-half or two million dollars. This amount would scarcely give a term of seven months; and to do this, even on the present low salary schedule, it would be necessary for all fees now collected, amounting in the aggregate to a million or more dollars annually, to be continued as a part of the school fund. If this private source of income is to be eliminated, it will be necessary to provide an amount totaling two and one-half to three million dollars in order to enable the schools in every county to remain in session for a period of one hundred and forty days on the present cost basis, which is far below the national average (*Annual Report*, 1926, pp. 14-15).

The effort to provide the seven-month school term would involve equalizing financial opportunity for 219 public school units in the state, 67 county systems, 63 county high schools, 11 state secondary agricultural schools, 50 city systems, and 28 town systems (*Annual Report*, 1926, p. 80). As the state began its efforts in 1927 to promote equalization, and in effect, a minimum foundation program, the problem of inadequate financial support for this measure was evident. This problem would recur later in 1935 with the Minimum Program Act.

In order to understand the conditions which contributed to shaping the financial situation of Alabama's schools in 1927, it is advisable to look back a few years. As Alabama was the only state in the union in which the legislature met in regular session only once in four years, the history of state support of public education in Alabama naturally divides itself into four-year periods.

Before 1927, the state did not attempt to equalize educational opportunity on a comprehensive basis. The first public school law, enacted in 1854, recognized the then existing inequalities of opportunity and endeavored to overcome them by providing that townships receiving income from sixteenth section lands granted by the federal government should not share in the legislative appropriations for education until townships receiving no such income were brought up to parity with those enjoying income from public land.

By provisions of the Constitution of 1901, the only substantial state support provided the public schools through the preceding quadrennia to 1927 was the Public School Fund, which was apportioned on a school census basis. The Public School Fund, comprised of the three-mill constitutional tax for schools, interest on sixteenth section funds, certain other minor sources of revenue, and an appropriation of $500,000 from the state General Fund, amounted to only about $3,515,000 annually during the 1923 quadrennium. Certain other special appropriations amounting to approximately $1,017,000 annually were made for county high schools, state secondary agricultural schools, etc., but these funds were not available for general distribution. During the quadrennium ending in 1927, five-month elementary terms and six-month high school terms were common in the white schools of about seventeen counties of the state (*Annual Report*, 1935-37, Part 1, p. 14). The issue was clear that the school term must be in-

creased and that new sources of revenue would have to be found.

The Alabama Special Educational Trust Fund Enacted, 1927

In the message of newly elected Governor Graves to the legislature on June 7, 1927, he defined the main business before the body as that of finding the revenue required for the needs of the schools. He said that "Alabama can afford all the millions of dollars that her necessities demand, but she cannot afford one penny that is not necessary" (Graves, June 7, 1927, p. LXXXVI, Regular Session).

In searching for additional revenue sources, the Recess Committee on Ways and Means recognized that school revenue came from only two sources: taxes on ad valorem property and legislative appropriations. Under the provisions of the constitution, the statewide 3.0 mill tax, the 1.0 mill county ad valorem tax, and the 3.0 mill county and 3.0 mill district ad valorem tax approved by constitutional amendment in 1916 represented the mills of taxation already being collected on ad valorem property for school purposes. In addition, the constitutional poll tax collected and kept in the counties for school purposes did not yield much revenue. Thus, in 1927 property owners were bearing the heaviest taxation in support of the state's school system. The legislature, recognizing this, concluded that new sources other than ad valorem property taxes must be tapped (Cain, pp. 72-74).

The Recess Committee on Ways and Means, having studied various methods of obtaining new revenue, reported a tax measure known as the Tunstall Revenue Bill to the House of Representatives. This bill proposed several kinds of luxury and nuisance taxes, especially increased levies on tobacco products. With Governor

Graves' endorsement it passed the House on June 17, 1927, by an overwhelming vote.

The Tunstall Revenue Bill, however, did not place any additional taxation on railroads, iron and coal interests, and other large corporations. Therefore, it was very unpopular in many quarters, and some 50 prominent businessmen appeared in Montgomery to voice their disapproval. The *Mobile Register* assailed the House of Representatives as a lobbyist interest for the railroads, the power companies, and the mining companies (The *Mobile Register,* June 18, 1927).

The Graves strategy, unknown at this time, was to wait for a more favorable opportunity to kill the measure rather than attacking it in the House. The Senate Committee on Finance and Taxation held public hearings on the Tunstall Bill, and on July 13, 1927, the measure was defeated by the Graves interests in the Senate. A modified measure was enacted placing taxes on coal, iron ore, minerals, railroads, telephone, telegraph and express companies, hydroelectric power, and numerous other commodities. With the bill virtually rewritten and passed by a vote of 21 to four in the Senate, the House had little choice but to accept the Senate's new version (Gilbert, p. 32).

Act No. 163 (H. 359—Tunstall) entitled "An Act In Reference to and to Further Provide for the General Revenue of the State of Alabama" was approved by Governor Graves on July 22, 1927. Section 2 of the Act specified new revenue sources to be levied for educational purposes:

2-A. A tax of 2 ½ per cent on gross receipts of intrastate business of railroads.

2-B. A tax of 2 ½ per cent on gross receipts of telegraph companies.

2-C. A tax of 2 ½ per cent on gross receipts above $50,000 of telephone companies.

2-D. A tax of 2 ½ per cent on gross receipts of express companies.

2-E. A tax of 2/5 of a mill on each kilowatt hour on hydroelectric companies.

2-F. A tonnage tax of 2 ½ cents per ton on the mining of coal.

2-G. A tonnage tax of 4 ½ cents per ton on the mining of iron ore.

2-H. A severance tax on sand, gravel, slag and other mineral products other than coal and iron of 3 per cent on net value at mine after deducting cost of mining and quarrying.

2-I. A tax of $20,000 per year on sleeping car companies.

2-J. A tax of 15 per cent on the wholesale price of cigars, cigarettes, and cheroots.

Section 2-K specified the purpose of these revenues.

2-K. All revenue collected under provisions of Section Two (2), 2-A, 2-B, 2-C, 2-D, 2-E, 2-F, 2-G, 2-H, 2-I, and 2-J of this Act shall be paid to the State Tax Commission of the State of Alabama by check or draft made payable to the State Treasurer and shall be set apart as a Trust Fund for Educational purposes only, to be designated as the Alabama Special Educational Trust Fund, and shall be kept separate and apart from all other funds in the State Treasury, and shall be paid out by the Treasurer on lawful appropriations, hereafter made specially from such funds by the Legislature of Alabama for educational purposes. The provisions of this section shall go into effect on October 1, 1927. (Acts of Alabama, 1927, No. 163, pp. 139-148).

The earmarking of these revenues to the credit of the Alabama Special Educational Trust Fund (ASETF), after deduction of the cost of collection, has been carried forward in the present code (Code of Alabama 1975, Section 40-1-31). Other taxes earmarked in the future to the credit of the ASETF carry other code citations. These will be discussed fully in Chapter VI.

In addition, this Act placed privilege and license taxes upon insurance companies, accountants, insurance adjusters, architects, attorneys, retail sales from railway cars, dentists, doctors, engineers, motor trucks, auto dealers, and assorted other professional and business pursuits, including a tax of two cents per gallon on lubricating oil. The total revenue from this bill was estimated to yield about $4 million in its first year. Practically all of this revenue would be generated from those taxes earmarked to the Alabama Special Educational Trust Fund (Acts of Alabama, 1927, No. 163, pp. 139-187).

With the passage of this revenue bill, Governor Graves commented:

> This is Alabama's great day, her independence day. Today she is free and I thank God for this legislature that has done more for the rehabilitation of the state than any other in her history. (*Montgomery Advertiser,* July 15, 1927.)

Unified Educational Program, 1927

The legislative session of 1927 witnessed a well-intentioned endeavor to promote by generous appropriations the development of education in Alabama through Act 163, and through the Unified Educational Program Act, No. 382. The legislation of that year (embodied for the most part in the act of August 25, 1927, No. 382), in spite of its failure to provide adequate revenue to meet the additional expenditures authorized in the law, must be viewed as a significant forward step in the educational

history of the state. While financially incomplete or premature, its purposes and provisions, considered from the standpoint of educational need, were basically sound. It is doubtful, however, whether it can be rightly termed a "Unified Educational Program" because it was accompanied by none of the changes in organization and it embodied none of the budgetary principles which were essential to the establishment and execution of such a program. The act contained the following appropriations:

1. $900,000 to the Equalization Fund
2. $850,000 to the Attendance Fund
3. $18,300 to the Library Fund
4. $128,500 to the Rural Schoolhouse Building Fund
5. $37,500 to the Illiteracy Fund
6. $200,706 for the Vocational Education Fund
7. $411,000 to the County High School Fund
8. $32,000 to the State Department of Education

The concluding section of the law provided that these appropriations should be payable out of the special trust fund created and set apart by Section 2 of the General Revenue Bill of 1927: "and in the event such trust fund is insufficient to cover said appropriations, then the balance of the same shall be payable out of any funds in the treasury not otherwise appropriated." This provision and its bearing on the general financial situation were significant in years to come (Brookings, 1932, pp. 282-283).

Results of the Seven-Month School Term, 1927

The legislature of 1927 not only provided additional funds for the support of public education, but set up the specific provisions for financing a program of education of not less than seven months. Definite objectives were sought in the expenditure of new funds, but the general dominating purpose was to provide an equal educational opportunity for all the children of the state.

Studies conducted in 1925 and 1926 led to the selection of a $750 teacher unit for elementary grades and a $1,400 teacher unit for high schools. A teacher unit, as set out in the law, represented the total cost of education of thirty pupils in average daily attendance during any given school year of not less than seven months. Reduced to the lowest denomination, this meant $25.00 for the education of each elementary pupil and $46.66 for the education of each high school pupil. These figures were arrived at by finding the average cost per teacher or pupil unit in the state. The figures given above approximate what was found to be the average cost of education. The total of the new appropriations, it was thought, would provide sufficient funds to hold to these teacher unit values during the quadrennium. As a matter of fact, during the 1927-28 school year, not only was the amount available sufficient to do this, but an additional allowance of 3.5 percent of the total cost of the program was allocated to the counties eligible to share in the apportionment of the equalization fund.

However, the increase in attendance was unprecedented during 1927-28 and 1928-29 and went far beyond the estimates on the basis of which the appropriations were made. There was an increase in aggregate attendance of more than 11 million school days over the two-year period. This naturally involved an increase in the number of teacher or pupil units. The distribution of the Equalization Fund to the counties had to be made on the basis of this increased attendance. Unfortunately, there was exactly the same amount of money available for distribution the following year, but the larger number of teacher units made the amount for each unit a little less. As a consequence, instead of having a surplus to distribute as had been the case in the previous year, it became necessary to reduce the value of the teacher or pupil unit by 5.5 percent. This reduction made it necessary to lower

the cost of the equalization program from the teacher unit cost for the previous years ($750 and $1,400 teacher unit values) by about $350,000, which, in reality, was the amount by which the Equalization Fund should have been increased (Annual Report, 1929, pp. 21-22).

The Great Depression, 1929

Soon after the Unified Education Program enacted by the 1927 legislature and funded through the ASETF went into effect, reductions in school revenue rather than increases were the order of the day. School revenue reached its highest point during the 1928-29 school year. The decrease in revenue felt for the first time since the Constitution of 1901 was adopted came in the 1929-30 school year. While the decrease was not serious, it heralded the impending disaster of the 1931 quadrennium.

Public expenditures for all educational purposes did not peak until 1929, while the percentage expenditure of educational funds for elementary and high schools decreased steadily during the quadrennium (Brookings, p. 262). As the economic situation grew worse, the problem of over-reliance on the property tax for both state and local education funding grew more acute. Whereas in 1910 the state could collect 55.6 per cent of its total revenue from the property tax, by 1930 it could collect only 26.6 per cent from this source.

By 1930 the financial conditions of both the state and public education were becoming alarming. State Superintendent A.F. Harmon summed up his fears for education's future:

> That sacrifices and adjustments of one kind or another may have to be made seems inevitable. But the distress of the State in years to come will be infinitely more pressing and the shame will be ours if we balance the budget with the ignorance of our children (*Annual Report,* 1931, p. 43).

Public education had advanced greatly in Alabama during the 1927-31 quadrennium largely as the result of increased state support. White rural elementary schools generally operated a minimum term of seven months, white rural high schools operated nine months, and in the cities both elementary and high schools for whites generally operated for nine-month terms. The appearance was that educational conditions should continue to improve.

> But sad days were rapidly approaching for the public schools of Alabama. The effects of the depression were becoming apparent on every hand. The assessed valuation of property was being rapidly lowered and state revenues were tobogganing downward (*Annual Report*, 1935-37, p. 15).

By 1929, educational expenditures had peaked on the basis of the educational program financed in the 1927 quadrennium. During this period, the percentage of state funding for public education increased dramatically as an expanded school term and equalization were sought. This is shown in Table 4-1.

Table 4-1

State Funds as a Percent or Total Education Fund, FY 1927 to FY 1931

Year	Total State and Local Funds	Total State Funds	Percentage State Funds
1927	$19,123,654.19	$5,491,069.18	28.7
1928	21,838,923.94	7,557,694.94	34.6
1929	22,827,472.85	7,767,479.85	34.0
1930	21:344,928.37	7,887,789.37	37.0
1931	20,373,922.45	8,019,010.45	39.4

Source: *Annual Reports*, 1927 to 1931

Whereas in 1927 the state had contributed less than one third of all funds derived from state and local revenues raised for public school purposes, by 1928 and 1929 it contributed a little more than one third, and by 1930 and 1931 nearly reached two fifths.

This increasing percentage of state support for education would become a major problem in the next quadrennium. With state revenues being hardest hit by the depression, the proportionate shortfall that education could expect would be dramatically heightened as education became a "nonessential" function of state government. However, this future was unforeseen as well as the devastating effects of the depression:

> When money is lacking for the retirement of debts contracted in good faith for educational purposes; when those who earn their living by furnishing the educational service demanded by the State must go unpaid, when the State, on account of lack of funds, must waive even temporarily efforts to provide instruction in amount and kind adequate to the needs of its young, there may not be occasion for alarm but there is need for the noblest kind of thinking on the part of all who are in any way concerned with education or are in any measure responsible for its effective functioning. These conditions are outcomes of economic depression (*Annual Report*, 1931, p. 28).

In an argument of contemporary interest, a plea was made for not reducing any state funding for public education: Admitting as we do the financial embarrassment of the State, it would be a tragic error to force the support of the public school system back upon the local units. Even in times of economic depression, such as we now suffer, it would be a cruel wrong to pay our public debt with money which should provide the children of this generation with

> education that will enable them better to meet the obligations that fall due in the years to come. It is unthinkable that Alabama as a State will ever balance its budget at the expense of the cost of the public school system (*Annual Report*, 1931, pp. 30-31).

This assumption was short-lived in the face of the rapidly changing financial conditions of the state. Alabama did balance its budget at the expense of its children in the public schools.

The 1931 Quadrennium

Financial Condition of Public Education, 1931

As Governor Bibb Graves left office on January 13, 1931, he was proud of his administration's accomplishments. Comparing the total education appropriations of Graves' administration to that of the two previous administrations reveals great progress. The length of the school term increased during Graves' administration, as is seen in Table 4-2.

TABLE 4-2

LENGTH OF PUBLIC SCHOOL TERMS IN DAYS PER YER FROM FY 1926 TO FY 1930

	White	Black	Total
1925-26			
Elementary School	140	114	131
High School	163	164	163
Elementary and High School	146	117	137
1926-27			
Elementary School	155	116	141
High School	168	164	167
Elementary and High School	158	129	147

1927-28			
Elementary School	154	123	143
High School	167	165	167
Elementary and High School	158	127	148
1928-29			
Elementary School	155	125	144
High School	169	165	169
Elementary and High School	159	129	149
1929-30			
Elementary School	155	126	145
High School	170	166	170
Elementary and High School	159	130	150

Source: *Annual Reports*, 1926, 1927, 1929, and 1931.

But by 1930 the effects of the depression were influencing the appropriations promised education some four years earlier, and the school program suffered. Revenues were insufficient to meet school appropriations in 1930, and as a result warrants were used to pay teachers salaries. The hardships that were to befall Alabama were in many ways similar to those of the Reconstruction Era (Cain, pp. 206-207).

The governorship was assumed by B. M. Miller in 1931. Miller spoke optimistically of the state of education in his address to the legislature, January 13, 1931:

> In education we have progressed all along the line. At the beginning of the last Session a $600,000 appropriation was made to bring the terms of rural schools up to a minimum of seven months and since that time, as a rule, this minimum has been maintained.
>
> During the six years from 1924 to 1930, the average school term for all children in the public schools of Alabama increased 17 days, from 133 days to 150 days. The term for elementary grades increased from 130 days to 145 days, or

15 days during this period, while the high school increased 5 days, from 165 to 170.

The natural growth in the number, the extension of terms, the greater attendance, and the expenses of consolidation have all increased to the point where our present appropriations are far short of our necessities. Alabama will not be true to herself and her own if she does not meet these needs and maintain this progress (Miller, Jan. 13, 193 1, p. VI-VII).

However, Governor Miller's administration seemed unable to cope with the growing crisis precipitated by the Great Depression of 1929, and, by the 1932-33 school year, the picture had darkened considerably:

> The impending disaster broke in full force in the 1931-35 quadrennium. The people of the State were panic stricken. Educational appropriations could not be paid due to a deficit in the State Treasury. Local school boards cut teachers' salaries and instituted every possible economy but such measures could not possibly meet the deficit in school funds. Efforts were made to increase state revenues in order that education appropriations might be paid but those efforts failed. (*Annual Report*, 1935-37, p. 15)

This disaster was fully reflected in the educational conditions under which the school year 1932-33 operated.

> (a) over 50,000 white children or approximately 21 percent of the children in the white rural schools of Alabama had school terms of three months and less.
>
> (b) over 129,000 white children or approximately 55 percent of the children in the white rural schools had school terms of five and one-half months and less.

> (c) over 48,000 regular students did not even enroll in school, either due to short terms or no available school opening (*Annual Report*, 1935-37, p. 16).

Store License Tax, 1931

The only additional tax passed for education during this period was the store license tax, approved in 1931, but it provided too little. The disaster would have to unfold completely before major new revenues would be found for education.

The store license tax, known as a "chain store tax" was passed by the legislature on July 7, 1931, to go into effect on October 1, 1931. The Act required a license to operate an "establishment of stores" in this state. For one store license it imposed a $1 fee; for the next four stores the fee was $10 each; for the next five stores it was $15 each; for the next ten stores it was $25 each; and for additional stores over twenty it was $75 each. In addition to the tax imposed, an application fee of 50 cents was required for each store. This tax ran with the calendar year, with half-year tax due after July 1 (Acts of Alabama, 1931, No. 369, p. 431).

The store license tax brought about considerable litigation. Although its constitutionality was attacked by the large chain store owners, the law did become operative October 1, 1931, and was upheld in court in the fall of 1931.

This tax was earmarked by Section 10.

> All money collected under the provisions of this Act, less the expenses incurred in the administration of this Act, shall be paid into the State Treasury, monthly, by the State Tax Commission, and shall be added to and shall constitute a part of the Education Trust Fund (Acts of Alabama, 1931, No. 369, p. 431).

The Brookings Institute Report, 1932

With bankruptcy facing the state, the legislature passed an act on January 30, 1931, requesting the services of the Institute for Government Research of the Brookings Institute of Washington, D.C., to survey the state government. The areas studied would be the administrative structure of the state government, the state's existing financial condition including a review of financial operations during recent years, and a review of the financial administration of the state and its political subdivisions, the taxation system of the state and the counties, and county government. The report was submitted to Governor Miller on June 11, 1932 (Brookings Institute, p. 3).

Financial Condition of the State, 1931. The report showed the state to be running a consolidated current deficit of $18,206,258.17 as of September 30, 1931. For the five-year period from 1927 to 1931 inclusive, the General Fund receipts exceeded ordinary expenditures by $2,921,872.82. Mandatory transfers from the General Fund to cover other appropriated expenses, however, totalled $15,713,526.75, leaving a deficit of $12,791,653.93. For 1931, the following transfers from the General Fund were for education:

1. Public School Fund:
   a. Constitutional $189,583.12
   b. Statutory law $500,000.00
2. Alabama Special Educational Trust Fund $1,916,562.67

These transfers were a part of the state funding crisis:

> This. . . .illustrates clearly why the General Fund has been accumulating an increasing deficit each year since October 1, 1927, particularly since the enactment of Act 382 (Unified Educational Program Act) of 1927, permanently appropriating additional funds for educational purposes. That the 1927 Legislature had some doubt that the new taxes authorized in Sections 2, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, and 2J of the general Revenue Bill of 1927 (Act 163, 1927) would be sufficient fully to finance the supplemental educational expenditures authorized in Act 382, there can be little question. If it had intended fully to finance these additional appropriations from the new taxes levied in the above sections of the general Revenue Bill, which directs that all taxes collected shall be credited to the "Alabama Special Educational Trust Fund," Section 31 of Act 382 of 1927 would have been superfluous.
>
> This section, which provides that "in the event such trust fund is insufficient to cover said appropriations, then the balance of the same shall be payable out of any other funds in the treasury not otherwise appropriated," (General Fund) should be repealed, and the sums now permanently appropriated should be reconsidered by each succeeding legislature, with a view either to reducing the appropriation grants to come within the estimated revenue to be received each fiscal year, or to levy additional taxes to finance the expenditures. Toward the total General Fund deficit of $12,792,000.00 accumulated in the past five years, these supplemental educational expenditures have contributed $7,278,157.27 and pensions $3,194,539.79, or a total of $10,472,698.06 (Brookings Institute, Vol. 3, p. 40).

Cause of the State's Financial Difficulty, 1901 to 1931. What resulted from the failure of previous legislatures to enact an effective budget law, to require a proper accounting system to control financial transactions, to pro-

duce current financial data needed by both the chief executive and the legislature, and to adopt an adequate appropriation system? These questions were answered in the Brookings report:

> (1) The state government has not balanced its budget since the close of the fiscal year 1907, when it had a surplus of $187,499.08.
>
> (2) It has expended more money each fiscal year of the last decade than it has received within a fiscal year from all sources other than borrowings.
>
> (3) It has not had sufficient cash on hand at the close of any given fiscal year during the past two decades to liquidate its immediate demands against cash, even after levying new taxes in 1919 and 1927, and applying highway revenues and proceeds of bond sales, except at the end of the fiscal years 1921, 1922, 1925, 1926, and 1927 (Brookings Institute, Vol. 3, p. 16).

The Condition of Educational Finance, 1931. The financial system for supporting education that had evolved was very cumbersome, with many different funds for different purposes. Monies for public education were appropriated through the Public School Fund, the General Fund, and the Alabama Special Educational Trust Fund (ASETF).

In 1931 the Public School Fund consisted of the following sources:

1. Sixteenth section lands
2. Valueless sixteenth section lands
3. Surplus revenue
4. School indemnity lands
5. James Wallace Fund
6. Escheats

7. The statewide 3.0 mill tax

Appropriations from the General Fund in 1931 were for the following purposes:

1. $17,500 to the State Board of Education for the State Department of Education (School Code, 1927, Sec. 62).
2. $5,000 annual contingency fund to the State Department of Education (School Code, 1927, Sec. 25).
3. $15,000 for certification and placement of teachers and $15,000 for the training of teachers (School Code, 1927, Sec. 369).
4. $500,000 continuing annual appropriation to the Public School Fund (School Code, 1927, Sec. II).
5. $257,000 for the Local Tax Bonus Fund (School Code, 1927, Sec. 320).
6. $135,000 for the county high school fund (School Code, 1927, Sec. 468).
7. $12,500 for the removal of illiteracy (School Code, 1927, Sec. 425).
8. $100,000 for a revolving fund (School Code, 1927, Sec. 64).
9. $221,500 for the Rural School House Fund (School Code, 1927, Sec. 370-1).
10. $6,700 for a bureau of information and industrial aid for the blind (Act of September 6, 1927).
11. $82,500 for State Secondary Agricultural Schools (School Code, 1927, Section 470).
12. $181,000 for vocational training and civilian rehabilitation (School Code, 1927, Section 420).
13. $150,000 for securing and distributing textbooks (School Code, 1927, Sec. 447).
14. $150,000 for assisting counties and cities in purchasing textbooks (School Code, 1927, Sec. 451).

Appropriations from the Alabama Special Educational Trust Fund in 1931 were for the following purposes:

1. $900,000 to the Equalization Fund
2. $850,000 to the Attendance Fund
3. $18,300 to Rural School Libraries
4. $128,500 for the Rural Schoolhouse Fund
5. $37,500 for the Illiteracy Fund
6. $200,706 for Vocational Education
7. $411,000 for high schools
8. $32,500 for the State Department of Education

At this same time, the following local taxes were being used to support public education in addition to state revenues:

1. The net amount of poll tax collected in the county (Constitution of 1901, Section 259).
2. One-mill and three-mill county taxes, (Constitution of 1901, Section 269 and Amendment III, Article XIX, Section 1) neither of which is made mandatory by the constitution.
3. Three-mill district tax allowable only if the county is levying not less than a 3.0 mill special county school tax (Constitution of 1901, Amendment III).

It should be particularly noted that neither the 1.0 mill tax nor the 3.0 mill tax was made mandatory by the constitution on any county; no tax up to 4.0 mills could be levied by a county unless "the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county," and voted for, in the case of the three-mill tax, by a majority of those voting. A further constitutional limitation on county school taxation provided that the total rate of taxation in any county for state and county combined should not exceed $1.25 on each $100 of taxable property, which left only five mills to the county unearmarked (As a result of Amendment 3 the real cap was $1.85.).

Actual Levy of County Taxes, 1931. It appears that in 1931 at least 56 counties were levying the 1.0 mill tax and all of the counties were levying the 3.0 mill tax. In addition, four counties were levying additional countywide taxes for school purposes, with the result that in Baldwin, Mobile, and Montgomery Counties, the total for school purposes amounted to 6.0 mills. Jefferson County was levying 4.5 mills.

In 1931, there were 1,23 8 special school taxing districts in the state, exclusive of the municipalities, ranging from one in Lowndes County to 64 in Marshall and in Morgan Counties. The average number of special school taxing districts in each county was 18.4. Nearly all of these districts were levying the 3.0 mill tax, thus raising the total school tax rate to 7.0 mills. In only 13 districts was the tax rate 2.0 mills. About 30 counties were entirely covered by special school taxing districts. As the usual county-wide tax levy was 11.5 mills, which would be increased in practically all special school districts to 14.5, it will be seen that in the greater part of the state, education was absorbing almost half its revenue from ad valorem taxation. Thus, the problem of financing the schools was closely related to the problem of property taxation (Brookings, 1932, pp. 266-269).

The problems of property taxation in 1931 are much the same as today. Issues such as fair appraisals, equal application of the appraisal process and restrictions on the number of mills that could be levied are current today. Even federal court intervention has failed to quiet criticisms made about the application of the property tax in Alabama.

Shortcomings in Educational Finance, 1932. In its review of Alabama's financial situation, the Brookings Report of 1932 defined the shortcomings of Alabama's system for the support of public schools:

The reliance that is placed in Alabama on ad valorem taxation for the financing of the public schools places a disproportionate share of the burden of educational support on the owners of property. The entire system, including the method by which the taxes are levied, has other conspicuous shortcomings.

Embodied in the Constitution, it lacks the flexibility necessary for adjustments to conditions, which change from year to year and vary from county to county and from district to district. Since local taxes are subject to popular approval, it endows the electorate with a budgetary and appropriation function with respect to a single field of administration. Voters can hardly be expected to judge intelligently the educational needs of an entire county. The matter is entirely too complicated, particularly where a majority of voters are non-taxpayers and for that reason are likely to feel little responsibility for the taxes that they vote. But, at the best, no intelligent action is possible with respect to one field of administration unless the needs of all other fields are at the same time taken into account. The present system permits, in general, no comparison between the needs of education and the needs of other functions, such as law enforcement, health, welfare, and highways.

Moreover, an indispensable feature of a proper appropriating system, is that appropriations should be subjected to periodical review. If the electorate is competent to vote on appropriations, it should do so oftener than once every ten, twenty, or forty years. Yet, no one would seriously propose the submission of school tax levies annual or biennially to the county or district electorate.

> By earmarking taxes for specific purposes, the plan now prescribed by the Constitution makes necessary an excessive number of special funds, complicates and confuses accounting, and renders impossible any clear understanding of the cost and needs of schools.
>
> It is fully realized that the present system has not been without its advantages in the educational development of Alabama. It is believed, however, that the time has come for a more flexible system in financing the public schools and one more in conformity with modem practice in budgeting and financial control (Brookings Institute, pp. 276-277).

The theory of state-aid funds at this time appears to have been based on three precepts:

1. that the public schools could not or should not be maintained entirely by local taxation;
2. that counties should be encouraged to levy the maximum constitutional tax rates for school purposes; and
3. that substantial equality of educational opportunity should be provided for all the children of the state, whether resident in the wealthier or in the poorer counties.

The effects of the Depression of 1929 would destroy equalization and force nearly total support for the schools back on the local communities. Nothing could obscure the obvious fact that the state was in deep financial trouble and could not afford to support public education.

The Budget and Financial Control Act of 1932

On August 16, 1932, the legislature met in extraordinary session to deal with the problems. Governor Miller proposed a program for meeting the deficit and correct-

ing the underlying causes of the continuing deficits. In brief, that program embraced the following: (1) the funding of the warrants and accounts payable; (2) the levying of an income tax; (3) the reduction of appropriations based upon consolidation of offices and functions and upon salary cuts; and (4) improvements in accounting and budgeting, with considerable stress placed on a provision to make no appropriation payable in full unless there were sufficient funds to meet it (Alyea, p. 16). The Budget and Financial Control Act known popularly as the "Fletcher Act," was passed on September 27, 1932. It was an ambitious piece of legislation designed to correct administrative and legislative inadequacies of long duration. Three areas were addressed: (I partial administrative reorganization, (2) reform of legislative appropriation practices, and (3) budgetary reform. (Alyea, p. 16).

The section of this Act which would become a center of controversy an disappointment to public education deals with appropriations:

> Section 19.—APPROPRIATIONS: The appropriations made shall not be available for expenditure until allotted as provided for in Section 20, except as may be otherwise provided in this Act. All appropriations now or hereafter made except per-capita appropriations now in force or hereafter made to eleemosynary and correctional institutions and the Alabama School for Deaf and Blind at Talladega, Alabama, which appropriations shall remain in full force and effect and payable and disbursed as now provided by law are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named only in the event that the estimated budget resources during each fiscal year of the quadrennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; the Governor shall restrict allotments to prevent an overdraft or deficit in any fiscal year for which appropriations are made by prorating without discrimination against any department, institution, commission or other State agency, the available revenues among the various departments, institutions, bureaus, boards, commissions and other State agencies. In other words, the said appropriations shall be payable in such proportion as the total sum of all appropriations bears to the total revenues estimated by the Governor as available in each of said fiscal years. The purpose of this provision is to insure that there shall be no overdraft or deficit in the several funds of the State at the end of a fiscal year, and the Governor is directed and required to so administer this Act as to prevent any such overdrafts or deficits (Acts of Alabama, 1932, No. 37, pp. 44-45).

Thus, Section 19 provided that appropriations, with a few stated exceptions, are not available for expenditure until allotted. It became the function of the governor to prevent any threatened overdraft. Appropriations were to be apportioned so that the money actually appropriated to any state department is in the same proportion to the total appropriation as the budgeted amount is to the Governor's estimate of total available revenue.

> During the early years this proved to be the most single important provision in the Fletcher Act; in fact, in the minds of many Alabamians, it is the budget act. . . . This formula at first glance appears to be a perfectly clear one, requiring little or no interpretation. However, such did not prove to be the case. The relatively extensive litigation and the subsequent effects of judicial interpretations of this provision proved to

be exceedingly important in the years immediately following (Alyea, p. 19).

Proration, 1932. The legislature had not fully understood the complexities of putting the state on a 100 percent pay-as-you-go plan requiring the scaling down of all expenditures to fit expected revenues. The comptroller made his first budget estimates on November 26, 1932, with the following adjustments necessary to the General Fund:

Estimated revenues	$6,680,358.33
Appropriations (including transfers)	$7,791,604.66
Estimated deficit	$1,111,246.33
Percentage reduction required	14.26%

The condition of the Alabama Special Educational Trust Fund required the following adjustments:

Estimated revenues	$2,655,550.00
Transfer from General Fund	$1,500,000.00
Total Estimated Revenues	$4,155,550.00
Amount appropriated	$4,980,167.08
Estimated deficit	$ 824,617.08
Percentage reduction required	16.57%

On the basis of these figures and the understanding of the Budget and Control Act in Section 19, all agencies funded through the General Fund would have their appropriations reduced by 14.26 percent. The ASETF would be reduced 16.57 percent. However, since the ASETF relied on a transfer from the General Fund, its transfer of ' $1.5 million would be reduced to $1,286,100, increasing its deficit to $1,038,517.08 or 20.86 percent. Therefore, in the initial stage, state education dollars were prorated twice (*Comptroller's Report*, November 26, 1932).

Attorney General Opinions on Proration, 1932. Unfortunately, this dilemma was only the beginning. On December 1, 1932, the comptroller wrote the attorney general for clarification on the following questions of proration:

(1) Is a statutory salary subject to proration?
(2) Are appropriations to departments whose only appropriations are for statutory salaries subject to proration?
(3) Where a lump sum appropriation to a department includes in part statutory salaries, is this lump sum appropriation subject to proration in whole or part?
(4) Is the Governor's contingent fund subject to proration?
(5) Is the Governor's interest contingent fund subject to proration?
(6) Is the Governor's emergency fund subject to proration?
(7) Does the provision of the Fletcher Act excepting per capita appropriations to eleemosynary and correctional institutions include the Convict Department? The State Training School for Girls?

With the single exception of question No. 3, the answer from the attorney general was no (*Attorney General's Report*, October 1, 1932 - September 30, 1934, pp. 101-103).

The result of this ruling was that there were now two classes of appropriations—those which were fixed and not subject to proration, and those which were subject to proration. As a result, the $1.5 million due to the ASETF from the General Fund became $862,950, a reduction of 42.67 percent which, in turn, reduced the total ASETF to 29.35 percent of its appropriation.

As the comptroller continued to make further estimates of revenue, it became clear that the revenue predictions of November 26, 1932, could not be reached. A further opinion was asked of the attorney general by the comptroller "to determine those functions which must

be maintained." The attorney general replied on May 1, 1933, by constructing a classification of essential and nonessential services of government, even though the Fletcher Act made no such reference:

> ". . . essential functions of government are the protection of life, liberty, and property; the orderly settlement of disputes between the subjects by Courts properly constituted, the suppression of domestic disorders and the repelling of foreign invasions; and also the punishment of crime and the punishment for the violation of statutes regulating human conduct (*Attorney General Reports,* 1932-34, pp. 220-223).

Under these conditions, the appropriations for 1932-33 were prorated, with certain state functions favored over others. Table 4-3 as follows details the proration of government spending for 1932-33. It is interesting that one area, the judicial branch, actually received over 100 percent of its appropriations, while the Public School Fund and the ASETF received only 9.25 percent of their appropriations.

Table 4-3

General Fund Appropriations and Net Disbursements for the Fiscal Year Ending September 30, 1933

Functions	Appropriation Totals	Net Disbursements	Net as Percent
1. Legislature	$173,788.26	$173,788.26	100.00%
2. Executive & Administrative	458,879.74	388,412.97	84.64%
3. Judicial	390,161.89	391,997.76	100.47%
4. Election Expense	70,800.00	57,184.03	80.77%
5. General Government Buildings	37,331.25	25,651.77	68.71%
6. Law Enforcement	68,040.00	67,544.44	99.27%
7. Business Regulation	148,837.50	95,931.36	64.63%
8. Conservation of Health and Sanitation	531,927.50	323,118.18	60.74%
9. Development & Conservation Of Natural Resources	41,900.00	25,118.44	59.95%
10. Charities, Hospitals and Corrections	1,691,998.67	1,353,153.90	79.97%
11. Public Education:			
A. Public School Fund	500,000.00	46,250.00	9.25%
B. ASETF	1,500,000.00	138,750.00	9.25%
C. State Superintendent of Education	5,800.00	5,800.00	10.00%
D. State Board of Education	52,700.00	26,048.32	49.43%
12. Alabama Institute for Deaf and Blind	192,916.00	192,916.00	100.00%
13. World War Scholarships	1,800.00	591.13	32.84%
14. Recreation	3,750.00	525.00	14.00%
15. Interest	885,595.00	689,426.44	77.85%
16. Grants and Obligations	306,725.79	306,725.79	100.00%
17. Governor's Emergency Fund	100,000.00	303.50	0.30%
18. Pensions	210,111.81	210,111.81	100.00%
19. Debt Service Payments:			
A. Temporary Loan	n.a.	300,000.00	n.a.
B. Previous Year's Warrants	911,421.65	911,421.65	100.00%
20. Miscellaneous Refunds	n.a.	148.65	n.a.
21. Miscellaneous Transfers	n.a.	2,147.17	n.a.
TOTAL	$8,284,085.06	$5,733,066.57	69.21%

Source: *Alabama's Balancing Budget,* by Paul Alyea, 1942, p.36.

Significant outcomes of the first year of operation under the Budget and Financial Control Act included a balanced budget, the establishment of statutory salaries not being subject to proration, and the distinction between essential and nonessential functions of state government. The disaster for education, after suffering through inadequate funding already due to the Depression of 1929, was that it was deemed a nonessential function of state government. Perhaps the greater tragedy of this was that the legislature abdicated through the Budget and Financial Control Act the proper responsibility to determine for itself the essential and nonessential functions of state government. Instead, such a major responsibility fell to a single executive officer, the attorney general (Alyea, pp. 37-40). However, the decision of the state attorney general would not go unchallenged.

State Supreme Court Decision on Proration: *Abramson v. Hard, 1932.* The policy for making deficiency allotments under Section 19 of the Budget and Financial Control Act as construed by the attorney general and executed by the comptroller was challenged in a taxpayer's bill by W. A. Abramson and Elizabeth Baldwin Hill against J. H. Hard, Jr., comptroller, and S.H. Blan, state treasurer. Abramson and Hill sought to enjoin the state comptroller from drawing, and the treasurer from paying, warrants on the balance of general funds until warrants were drawn for certain educational appropriations in the amount of their pro rata share of revenues available. Judge Walter B. Jones of Montgomery County Circuit Court, denied this injunction. When appeal was filed with the Alabama Supreme Court, the justices all declared that none of them was competent to sit on the case. This disqualification was because proration made according to the statutory formula of the Fletcher Act, strictly constructed, would necessarily reduce the salary of every official of the state, including Supreme Court justices. The governor then appointed a special court consisting of five members of the bar to hear the case (*Abramson v. Hard,* 229 Ala. 3, 155, So. 590).

This special Supreme Court also denied the injunction:

> To fixed salaries and to other fixed expenses, such as the per them allowed to officers for traveling expenses, both of which are appropriations to the officers to whom they are due rather than to any department, institution, bureau, board, commission, or other state agency, the proration provisions of this act have no application....
>
> There are, however, some of the necessary expenses of government which in their nature cannot be definitely determined with exactness

> in advance, as to which the Legislature has evidenced its intent in our opinion, that they shall be paid in full, and to that end has set apart out of the general funds an amount which is to be used insofar as it is needed to pay these expenses in full. Appropriations for the payment of such governmental expenses do not differ essentially from fixed salaries or other fixed expenses. They are to be paid in full, so far as needed for payment of the specific governmental expenses for which they have been appropriated. Such expenses as the expense for fuel, light, and water, for postage, post office box rent, for repairing and insuring state property, for public printing, for telephone and telegraph service, for publishing the Governor's proclamation, for premiums on officials bonds, for distributing public documents, for feeding prisoners, for arrest of absconding felons, for removal of prisoners, and others that might be mentioned are of this character, and it seems clear that the appropriations made for such specific purposes were intended by the Legislature to be paid in full and the appropriations to their full extent here set apart and were intended to be used so far as needed to pay them in full. On similar principles those appropriations setting apart specific amounts to take care of interest on the public debt and to provide for contingencies and emergencies were intended to set apart the specific amount fixed therein to be used for the purposes specified insofar as they are needed.
>
> No appropriation of this character is, in our opinion an appropriation to any department, institution, bureau, board, commission, or state agency "for the administration, operation, or maintenance" thereof within the meaning of

> the Budget Act so as to be subject to allotment and proration. (*Abramson v. Hard*, 229, Ala.,11.)

All of the special justices concurred in upholding the lower court's decision and, in effect, affirmed the distinction previously made between essential and nonessential functions of state government. In 1935, the legislature would attempt to make education an essential function through the Tucker Act, a discussion of which will follow.

Refinancing State Government, 1932

Governor Miller, having received the Brookings Report on the condition of state government on June 11, 1932, accepted the desperate financial plight of the state. The time for action had come. In the special session of August 16, 1932, he presented the legislature a plan for refunding the state debt:

> We must face facts and not fancy screens. The current debts of Alabama have reached and passed the Twenty Million Dollar Mark. The credit of the State must not be lost. The debts must be paid or arrangements made to pay them. They have been accumulating yearly for nearly for over a quarter of a century—since about the year 1907. There has been in recent years no budget balancing. The appropriations grew larger year by year and the income failed to keep step; hence the gradual growth of the deficit. Each Legislature appropriated more than the revenue produced thereby increasing appropriations and decreasing revenue annually and causing a growing deficit. Banks call it overdrafts.
>
> This must end. The debts must be paid. The budget must be balanced. For the debts you and the Executive are responsible only in a small degree; but we are not met face to face with the responsibility to pay or arrange to pay the debts,

> and to balance the budget, so we can live within our income (Miller, August 16, 1932, p. III).

Noting that ad valorem taxation had been the primary source of government revenues in the post, Governor Miller stipulated that no such additional levies should be added; instead, he proposed that such levies be lowered in the future. Searching for other forms of taxation, he discussed a sales tax on all retail sales. He declared this form of taxation to be a consumer's tax on those now "battling for bread, hunting for food, seeking clothes."

Rejecting the sales tax, he proposed that to raise taxes, the legislature should go to those who have made money, who had money, and who had the ability to pay. Profits and incomes had never been taxed in Alabama. Governor Miller noted that although there had been no federal income tax until 1916, since its inception a total of $133,067,985 had been paid by Alabama corporations and individuals to the federal government. He proposed an income tax in Alabama modeled after the federal income tax which could, in a few years, pay off the current debts, assist in running the schools, and gradually reduce the ad valorem tax on real and personal property (Miller, August 16, 1932, pp. V-VI).

To accomplish this, Governor Miller proposed a constitutional amendment to authorize a 20 million dollar bond issue to pay off the current debts of Alabama as of October 1, 1932, and an income tax amendment to pay the annual interest on this debt and the balance to supplement the educational trust funds for school purposes. He stressed the need for the income tax for education:

> Alabama's greatest asset is her children. Fifteen Million Dollars practically of this Twenty Million Dollar debt is due to education. Nearly five million of this debt is due the teachers for earned salaries.

These debts must be paid. My plan for paying and arranging to pay them has been fully stated to you.

The Educational Trust Fund taxes now aggregate an annual income for school purposes of practically Six Million Dollars. If this Six Million Dollar annual school trust fund is used to pay the Fifteen Million Dollar school debts, then it will take two and one-half years to pay it and during that time the schools would receive no state aid and would close or shorten their sessions. If the income tax and bond amendments are submitted and approved this will arrange to pay the entire school debts, add considerable sum to the school fund, and leave the Six Million Dollar Educational Trust Fund free and clear from the school. Reduction in salaries, appropriations and abolishing useless officers, employees and departments will lift some of the burden off the General Fund and permit the schools to participate therein (Miller, August 16, 1932, p. VII).

In addition, the governor proposed budgetary control measures that were embodied in the Budget and Financial Control Act, discussed earlier.

Income Tax Amendment, 1932. One of the most significant efforts to finance the state came in 1932, when the legislature approved an act proposing amendment to the Constitution to levy an income tax:

> The Legislature shall have the power to levy and collect taxes for State purposes on net income from whatever source derived within this State including the incomes derived from salaries, fees, and compensation paid by the State, County, Municipality, and any agency or creature thereof for the calendar year 1932, and

> thereafter, and to designate and to define the incomes to be taxed and to fix the rates of taxes (Acts of Alabama, Extra Session 1932, No. 8, p. 8).

The act was approved on August 30, 1932, and submitted to the voters for referendum on November 8, 1932, just four days after the legislature adjourned. The measure was defeated by the people. On January 31, 1933, Governor Miller again called the legislature into Special Session to consider a new amendment:

> . . . .The plans proposed and provided by you—an income tax and bond issue amendments to the Constitution—to pay these debts and to keep schools from closing, were defeated by the voters at the polls on the 8th day of November, 1932.
>
> This in effect was a repudiation of the debts and the plan of payment; but it was not, in my opinion, so intended by the electorate. The real issue was not made clear and plain to them. Much false propaganda mislead them. They had no time to consider it. You adjourned at midnight on the 4th of November and the election was on the 8th of November. You could not in that time—3 days—present the facts to the voters.
>
> The voters had only one chance at the income tax amendment and this was four days after you adjourned. They should have another right and opportunity to pass on it, more than ninety days after you adjourn, as the Constitution directs. Give the voters an opportunity to see the real issue, to realize the struggle "the able to pay taxes" are making to avoid paying their reasonable share of the taxes and to keep the burden of taxes on those "unable to pay it (Miller, January 31, 1933, pp. V-VI)."

On April 7, 1933, the legislature approved an income tax amendment which was significantly different from the one previously submitted: (1) whereas the former did not fix the rate of taxation, the latter fixed the rate for individuals at five percent and for corporations at three percent; (2) whereas the former did not provide for exemptions, the latter provided exemptions in the amount of $1,500 for an unmarried person, $3,000 for a married couple, and $300 for each child under 18 years of age (Acts of 1933, Extra Session, No. 125, p. 116). These conditions made the income tax more acceptable to the voters, and with the deteriorating financial condition of education in the state, Amendment 25 was passed and proclaimed ratified July 18, 1933. The amendment follows:

> Article XXII. The Legislature shall have the power to levy and collect taxes for state purposes on net incomes from whatever source derived within this state, including the incomes derived from salaries, fees and compensation paid from the State, County, Municipality, and any agency or creature thereof, for the calendar year, 1933, and thereafter and to designate and define the incomes to be taxed and to fix the rates of taxes provided that the rate shall not exceed 5 percent nor 3 percent on corporations. Income shall not be deemed property for purposes of ad valorem taxes. From net income an exemption of not less than fifteen hundred dollars ($1,500.00) shall be allowed to unmarried persons and an exemption of not less than three thousand dollars ($3,000.00) shall be allowed to the head of a family, provided that only one exemption shall be allowed to husband and wife where they are living together and make separate returns for income tax. An exemption of not less than three hundred dollars ($300.00) shall be allowed for each dependent member of the family of an income tax payer under the age of 18 years. The legislature shall reduce the ad valorem tax from time to time when and to such an amount as the revenue derived from the income tax will justify. In the event the legislature levies an income tax, such tax must be levied upon the salaries, income, fees, or other compensation of state, county and municipal officers and employees, on the same basis as such income taxes are levied upon other persons. All income derived from such tax shall be held in trust for the payment of the floating debt of Alabama until all debts due on October 1st, 1932 are paid and thereafter used exclusively for the reduction of state ad valorem taxes (Constitution of 1901, Amendment No. 25).

Rates Fixed on Individual and Corporate Income Tax, 1935. The General Revenue Act of 1935 provided the rate of taxation for both individual and corporate incomes, not to exceed the maximum rates of five and three percent respectively as stipulated by Amendment 25, 1933.

Individual Income Tax.

> Section 345.3. Tax on Individuals. The tax herein levied and imposed upon every resident of this State, which tax is in addition to all other taxes imposed by this Act, and which tax shall be assessed, collected and paid annually upon and with respect to his entire net taxable income as herein defined and shall be computed at rates as follows: (a) On the excess over the amount exempted herein, up to and including one thousand dollars ($1,000.00), up to and including three thousand dollars ($3,000.00),

> three per cent (3%). (c) On the excess over the amount exempted herein above three thousand dollars ($3,000.00) up to and including five thousand dollars ($5,000.00) four and one-half percent (4-½%). (d) On the excess over the amount exempted herein above five thousand dollars ($5,000.00), five per cent (5%) .... (Acts 1935, Regular Session, No. 194, p. 256).

The tax rate provisions of this act have been carried unchanged through the Code of 1940 into the Code of 1975 as Section 40-18-5.

Corporate Income Tax.

> Section 345.24. Imposition of Income Tax on Corporations. A tax is hereby levied and imposed upon every corporation organized under the laws of Alabama, which shall be assessed, collected and paid annually for the taxable year 1935 and for each taxable year thereafter upon and with respect to their entire net income as hereinafter defined, at rate as follows: Three per centum of the amount of the entire net income in excess of the credits against such net income provided herein. A like tax of three per centum of the entire net income is hereby levied and imposed upon every foreign corporation during business in the State of Alabama which tax shall be assessed, collected and paid for the taxable year 1935, and for each taxable year thereafter upon and with respect to their entire net income as herein defined ... (Acts of 1935, Regular Session, No. 194, p. 256).

The rate of three percent remained until 1963, when it was changed to five percent (Acts of 1963, Second Special Session, No. 104, p. 284). This amended rate of taxation was then carried unchanged into the Code of 1975 as Section 40-18-31.

Warrant Amendment, 1932. The failure of past legislatures to properly budget expenditures and raise sufficient revenues to pay appropriations resulted in a cumulative excess debt over assets of $13,096,633.27 by September 30, 1931. The borrowings of the teachers' colleges, the A & M Institute, and the Alabama School of Trades added an additional $906,733.22 to this floating debt. Added to this sum, the anticipated General Fund deficit of $6,419,340 for the 1931-32 fiscal year resulted in a total floating debt of $20,422,706.49, which was required by law to be liquidated by September 30, 1932 (Brookings Institute, Vol. 3, p. 20).

The incurrence and administration of debt by the state had been addressed in Article XI, Section 213, of the Constitution of 1901:

> After the ratification of this Constitution no new debt shall be created against or incurred by this State, or its authority, except to repel invasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each House of the Legislature, and the vote shall be taken by yeas and nays, and entered on the Journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; provided the governor may be authorized to negotiate temporary loans never to exceed three hundred thousand dollars, to meet the deficiencies in the treasury, and until the same is paid no new loan shall be negotiated; provided further that this section shall not be so construed as to prevent the issuance of bonds for the purpose of refunding the existing bonded indebtedness of the State (Constitution of 190 1, Article XI, Section 213).

Under these provisions, it appears certain that the floating debt was contrary to the intent of the constitution. However, by using the $300,000 authorized to the governor's office, the governor had been able to pay the interest and renew the debt yearly.

As previously stated, a direct cause of the floating debt had been the creation of the ASETF in 1927. The 1927 legislature had doubts as to whether the taxes levied in the creation of the ASETF would be adequate to fully fund the continuing provisions of the Unified Education Budget of 1927 (Act 1927, Regular Session, No. 382, p. 445). In anticipation of this shortfall, the legislature had provided for relief from the General Fund:

> Section 31. The several appropriations herein provided for shall be payable out of the special trust fund created and set apart for educational purposes by Section 2 of the General Revenue Bill of 1927; and in the event such trust fund is insufficient to cover said appropriations, then the balance of the same shall be payable out of any other funds in the treasury not otherwise appropriated (Acts 1927, Regular Session, No. 382, p. 442).

It is clear that the educational aims of the 1927 legislature were not adequately funded through new revenues and thus became the major component of the floating debt.

To pay off the floating debt of the state and reestablish financial integrity, in 1933 the legislature passed a constitutional amendment to accompany the income tax amendment, which would provide state government with the proceeds of the income tax and legally repay all loans. The so-called "Warrant Amendment" was presented to the people on July 18, 1933, and proclaimed ratified as Amendment 26 on August 2, 1933:

> After the ratification of this constitution, no new debt shall be created against, or incurred by the state, or its authority except to repel invasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each house of the legislature, and the vote shall be taken by yeas and nays and entered on the journals; provided, the governor may be authorized to negotiate temporary loans, never to exceed three hundred thousand dollars to meet the deficiencies in the treasury, and until the same is paid no new loan shall be negotiated; (provided, further, that this section shall not be so construed as to prevent the issuance of bonds for the purpose of refunding the existing bonded indebtedness of the state. Provided, further, that this section shall not be so construed as to prevent the governor from paying interest at the rate of not exceeding 5% per annum payable semiannually from July 1, 1933, on the floating indebtedness of the state at the close of business on September 30, 1932, as shown by outstanding and unpaid warrants drawn on the treasury, as provided by law, amounting in the aggregate to $16,943,357.12 and items enumerated in an act of the legislature number 294, being senate bill 272, approved November 9, 1932 (Acts 1932, Ex. Session., p. 298), all of which are hereby ratified and confirmed.) All warrants and/or instruments issued or to be issued representing such indebtedness shall be a direct obligation of the state, and for the prompt and faithful payment of the principal and interest thereon, the full faith and credit of the state is hereby irrevocably pledged, and such warrants and/or instruments shall be exempt forever from all taxes of every kind. Any act creating or incurring any new debt against the state, except as herein provided for, shall be

absolutely void. To create a sinking fund for the prompt and faithful payment of the floating indebtedness of the state, and interest thereon, the net proceeds of any income tax which may be levied by the legislature pursuant to law is hereby pledged. To prevent further deficits in the state treasury, it shall be unlawful from and after the adoption of this amendment for the state comptroller of the state of Alabama to draw any warrant or other order for the payment of money belonging to, or administered by, the state of Alabama upon the state treasurer, unless there is in the hand of such treasurer money appropriated and available for the fan payment of the same. In case there is, at the end of any fiscal year, insufficient money in the state treasury for the payment of all proper claims presented to the state comptroller for the issuance of warrants, the comptroller shall issue warrants for that proportion of each such claim which the money available for the payment of all said claims bears to the whole, and such warrants for such prorated sums shall thereupon be paid by the state treasurer. At the end of each fiscal year all unpaid appropriations which exceed the amount of money in the state treasury subject to the payment of the same after the proration above provided for, shall thereupon become null and void to the extent of such excess. Any person violating any of the provisions of this amendment shall, on conviction, be punished by a fine of not exceeding five thousand dollars, or by imprisonment in the penitentiary for not more than two years, one or both, at the discretion of the jury trying the same, and the violation of any provisions of this amendment shall also be ground for impeachment (Amendment 26, Constitution of 1901).

Depression Disbursements. After a century of statehood, a financial house of cards had collapsed:

> It was not until the great depression of the early nineteen-thirties that the State was forced into a thorough-going financial readjustment (Ray, p. 84).

By 1930 predepression disbursements had peaked. As shown in Table 4-4, if the total disbursements for 1930 are taken as a base at 100 percent then disbursements stood at 69.4 percent in 1932 and at 66.0 percent in 1933. By 1935, they had recovered to 83.1 percent. The Budget and Financial Control Act had begun operation in 1933 and was the last nail in the coffin of the floating debt. While many General Fund and ASETF disbursements were reduced drastically in 1933, legislative and judicial disbursements were not affected by the depression. Health disbursements, as well as educational ones, were declared "nonessential" and bore the full brunt of proration. But even before the depression, the growth of schools in Alabama had not been rapid. Both government leaders and the people regarded education as a burden, and only meager support for it was gained after World War I. As a result of this attitude, by 1930 every aspect of education in Alabama had come to depend heavily on state funding, and this dependence aggravated the financial blow of having over one-half of these funds withdrawn in the course of three years (Ray, p. 85-89).

It is fair to say that schools in Alabama during the 1930s suffered not so much from discriminatory proration, as from the fact that so much state funding came from the ASETF. The reduction in disbursements for school purposes from 1932 to 1933 exceeded $5.5 million or nearly $500,000 more than the total 1930 disbursements to the other five areas of state government as shown in Table 4-4.

TABLE 4-4

Selected Depression Disbursements and Percentage Relationships of FY 1930 to FY 1935 Compared to FY 1930

Purpose	1930 Disbursement	Percentage* 1930	1932	1933	1935
General Government	$1,544,356.14	100	94	92	113
Protection	536,900.73	100	63	49	63
Conservation	1,035,226.57	100	57	40	50
Health and Sanitation	633,851.77	100	112	39	65
Hospitals and Institutions	1,281,249.19	100	93	78	82
Schools	11,586,738.93	100	94	46	68

*to the nearest fraction
Source: Ray, p.88

While it is correct that schools suffered the greatest dollar loss during the depression, Table 4-4 also illustrates that other areas of state government were penalized to a greater degree in terms of percentage. The stabilizing influence of the Public School Fund assisted schools greatly during the depression and prevented the total disbursement from falling lower than it did. Table 4-5 shows the rapid recovery of the Public School Fund by 1935, while other categories such as higher education, the Equalization Fund, and the Attendance Fund continued to face financial ruin. By 1935, some items in Table 4-5 received no funding, but were absorbed into other amounts.

From the depression disbursement experience, it can be concluded that many of the reductions occurred through the contraction of revenues earmarked for particular functions and services declared to be nonessential. The result of the experience was renewed impetus for earmarking of revenues, with agencies and services preferring since the depression to avoid dependence on the General Fund. Of the tax changes made from 1930 to

the levy of the sales tax in 1936-37, only the proceeds of the inheritance tax were earmarked for the General Fund. Other revenues were reserved for other uses: the gasoline tax for highways, tobacco and sales taxes for education, mileage taxes for the motor carrier fund, and the income tax for service of warrant refunding bonds. Thus, the advantages of new taxes precipitated by the depression accrued to highways, education, and debt service. Distrust of the administration may be less of an underlying cause of excessive earmarking than the desire of agency administrators to achieve independence from the legislature (Ray, pp. 91-99).

TABLE 4-5

Major School Disbursement Items and Percentage Relationships of FY 1930 to FY 1935 Compared to 1930

Purpose	1930 Disbursement	Percentage* 1930	1932	1933	1935
Public School Fund	$ 4,460,030.40	100	104	59	85
Institutions of Higher Education	2,974,428.65	100	73	28	34
Public School Equalization	900,000.00	100	100	49	0
School Attendance Fund	851,678.50	100	100	49	0
County High School	726,875.39	100	100	48	232
Vocational Education	496,678.78	100	127	57	80
Erecting and Repairing Rural Schools	353,957.00	100	88	7	24
Bonus School Fund	257,000.00	100	100	51	0
Teacher Training and Certification	205,032.99	100	98	33	41
Education Revolving Fund	91,020.91	100	110	54	0
Removal of Illiteracy	57,730.25	100	61	9	11
State Board of Education	47,961.78	100	95	185	172
Industrial Rehabilitation	41,703.25	100	121	53	57
All Other	122,641.03	100	23	10	554

*To the nearest fraction
Source: Ray, p.90

Effects of Refinancing Measures, 1932-34. The Warrant and Income Tax Amendments were evidence that the people of Alabama were willing to see that the state met its just obligations. While most of the $20 million bond issue thus authorized was to pay state debts for education, the bond issue did nothing for the 1934 status of educational financing. Paying off old debts did not alleviate the lack of funding under the Budget and Financial Control Act. State Superintendent A.F. Harmon characterized the situation in 1932-33: "So far as education is concerned, financial chaos more aptly describes our condition. The financing of education in Alabama is far from a settled question. More is the wonder, and great should be the praise for all those who had their share in it, that our public school system has not completely broken down. Their endurance passeth understanding (*Annual Report*, 1933, Part I p. 18)."

For the 1932-33 school year, only 46 percent of the ASETF appropriations and 71 percent of the anticipated revenues from the Public School Fund were paid by the state. As a result of the Budget and Financial Control Act, these unpaid appropriations ceased to be an obligation of the state. The efforts to create a minimum school term of seven months were wasted as Alabama looked forward to an average elementary school term of four months and an average high school term of four and one-half months for 1933-34. Only with financial aid from the Federal Emergency Relief Administration to supplement local, county, and state funds for rural elementary schools was there a school term at all (*Annual Report*, 1933, Part I, pp. 18-21). By the 1933-34 school year, conditions had not improved. It appeared that only 58 percent of the ASETF appropriations would be available to the schools. Concern continued to grow over the effects of the Budget and Financial Control Act:

> The Budget and Financial Control Act is sound in principle. It does not solve the problem of financing education in Alabama. To solve the problem of financing education, revenues must be provided to pay appropriations in full, laws must be enacted to place education among the essential functions of government and the budget act must be revised to make possible sound budgetary procedure with respect to education (*Annual Report*, 1934, Part 1, p. 41).

As is seen in Table 4-6 below, conditions in education, which had improved from the Unified Educational Program of 1927 to a high point in 1929-30, had deteriorated. The term length had decreased to 128 days, well below the 140-day minimum term expected. The expenditure per pupil and teachers' salaries declined drastically.

Table 4-6

Significant Facts Regarding Education From 1927-28 Through 1932-33

Year	Length of Term in Days	Number of Teachers	Number of Pupils Enrolled	Current Expense	Current Expense Per Pupil Enrolled	Average Annual Salary Per Teacher
1927-28	148	16,795	635,290	$15,678,340	$24.68	$726.00
1928-29	149	17,412	638,358	17,049,716	26.71	750.00
1929-30	150	17,130	622,988	17,444,674	28.00	761.00
1930-31	148	17,227	630,388	17,255,508	27.37	734.00
1931-32	147	16,704	639,836	15,658,106	24.47	682.00
1932-33	128	16,424	600,765	11,535,185	19.20	488.00

Source: *Annual Report*, 1934, p. 43.

Temporary Federal Relief. It was abundantly clear that the three major legislative efforts of the 1931 quadrennium, the Budget and Financial Control Act, the War-

rant Amendment, and the Income Tax Amendment had not solved the financial plight of education. Only one source of financial relief could be found, the Federal Emergency Relief Administration. As the 1934 *Annual Report* shows, relief was badly needed:

> During 1932-33 many Alabama schools were forced to close abruptly in the midst of the term because of lack of revenues. The school term for the state for that year was only 128 days. Many teachers went unpaid during a part of that time. Again in 1933-34 schools faced the year with such limited finances that there was little prospect for a normal term in many counties and cities, no matter how drastically expenses were curtailed (*Annual Report*, 1934, Part I, pp. 51-52).

By January of 1934, it was clear that all schools would be closed in 24 counties and in 12 cities. Under the provisions of the Federal Emergency Relief Administration, school terms could be extended with federal funds in counties and cities under 5,000 population if all state and local funds were exhausted. Only teachers whose salaries comprised their sole source of income were eligible for employment. Federal relief funds in the amount of $1,971,982.21 were actually used in extending school terms. In all, some 39 of the 67 counties, 22 of the 24 cities under 5,000 population, and the 11 state secondary agricultural schools used federal relief funds for payment of salaries for teachers for periods extending from six days to 4.9 months (*Annual Report*, 1934, Part I, pp. 5 153). But this relief was only a temporary stopgap measure and would not be available in the next academic year. The worst conditions ever to befall education in Alabama were just around the corner.

The 1935 Quadrennium

In campaigning for his second term in 1934, Bibb Graves stood on his previous educational record. He asked for d minimum school term of seven months for all Alabama children and the full payment of teachers' salaries. With the return of normal economic conditions he advocated free textbooks for the public schools. He stressed his opposition to the sales tax and increased taxes, but went on to say that he would balance the budget, pay the state's debts, and run the schools (Cain, pp. 56-57).

Bibb Graves Re-elected, 1935

Bibb Graves was inaugurated as governor for the second time on January 14, 1935. However, it was his predecessor, Governor Miller who addressed the legislature on January 8, 1935, for the opening session of the 1935 quadrennium. Miller recounted the Budget and Financial Control Act, the Income Tax Amendment, and the Warrant Amendment as great achievements of his administration and the people of Alabama. He noted that the state budget was balanced, that there was a cash balance in the treasury, and enough anticipated revenues "if economically administered, to defray the expenses of the government."

> The educational financial trouble in Alabama is not due to the State but grows out of the fact that some of the County, district and City Boards of Education have anticipated and spent the County, District and City taxes for years before they were received. Beautiful buildings were erected on credit and the future taxes were pledged to meet annually the interest and principal on the building debts. When the County, District and City taxes were collected, in many instances they are applied to the pay-

ment of building and school bus debts and the teachers go unpaid on account thereof.

An annual budget balancing system with teeth in it and penalties attached should be made applicable to these county and city boards of education, just like it applies to the State of Alabama. When that is done you can expect business results from our Educational system and teachers will be paid their salaries (Miller, January 8, 1935, pp. XVI-XVIII).

A different tone, however, was set in the inauguration speech of Governor Bibb Graves. He promised a progressive administration that would stress human welfare as the primary objective of his administration:

> Human welfare is the fixed star that sets the course of America's ship of state. That ship's greatest captain, Franklin D. Roosevelt, with clear eye and firm hand, is keeping us steadfastly on the course and that course is the only sure way to peace and safety, to prosperity and happiness, at and abroad *(Alabama Journal,* Montgomery, Alabama, January 14, 1935, p. 38).

In his address to the legislature on May 7, 1935, Governor Graves again stressed his concern for human welfare:

> We advocate the continuous responsibility of government for human welfare and especially the protection of children (Graves, May 7, 1935, P. xiii).

He continued that "We must provide for Alabama a functioning government with stress on schools and health." In order to provide adequate financing for state government and education Graves asked the legislature to pass a revenue bill during the session beginning May 7 and to postpone appropriations until after a recess. It was

his feeling that a more intelligent decision on financial needs could be made in August.

The Financial Conditions of Education, 1935-36

With the failure of the Tucker Act, an attempt to end the financial discrimination against education, in 1935, the excessive proration under the Budget and Financial Control Act continued as it had since 1932. Although three major acts would be passed during the August 16, 1935, session creating a minimum foundation program and improved local budgeting, none of these measures would increase funding. And even with increased funding, without earmarking, such funds would be subject to the proration because education had been ruled a nonessential function of state government.

By February and March of 1936, schools in 51 counties had closed early with less than a seven-month school term. As late as February, 1936, teachers in many counties had received only one month's salary (Cain, p. 237). The American Legion vigorously opposed the manner in which state funds were being prorated, calling it a great injustice to pay some state employees one hundred percent while leaving schools and teachers to beg:

> Education is essential to democratic government. Ignorance is the most potent ally of autocracy, communism and other "isms' which are ever on the alert to tear down the principles for which we fought in '17 and '18 and for which our greatest organization stands. . . . The public schools are the chief bulwark to preserve the principles of Americanism. We cannot and we must not let our schools close *(Alabama School Journal,* Vol. LIII, Feb. 1936, p. 7).

The report to the governor from the comptroller on February 10, 1936, revealed the desperate financial condi-

tion of the schools, listing the following appropriations due from the General Fund for education:

Public Schools	$3,660,516.00
Higher Education	$2,231,221.61
Total	$5,891,737.61

In addition, $541,650 had been appropriated for miscellaneous nonessentials such as health for a grand total of $6,433,357.61 for nonessential functions. Revenue was anticipated to be $7,735,816.77 with essential functions claiming $6,035,384.72 and leaving a balance for nonessential functions as defined by *Abramson v. Hard* in the amount of $1,700,432.05. This meant that education would receive only 26.43 percent of the amount the legislature had appropriated and deemed necessary to operate the schools. The education appropriation was thus reduced by $4,334,463.65 (Graves, February 11, 1936, pp. III-V).

Governor Graves reported the dire circumstances to the legislature on February 11, 1936:

> I believe that we face an early collapse of our school and health programs unless effective financial relief is promptly provided. To provide this relief is the great purpose of this session (Graves, February 11, 1936, p. III).

As the 1935-36 financial year closed, the public schools were limited to a state minimum program term of only five and three-quarters months, probably the shortest in the nation. Ninety-two percent of the state's deficit was again assessed against public education. Thousands of school children failed to be promoted during this year because of the short term and were forced to repeat the year (*Annual Report*, 1935-37, Part 1, p. 23).

Parity for Education, 1935-36

During this period these were two attempts to make education a legitimately equal function of government. Both attempts ended in failure.

The Tucker Act, 1935. One such effort was made in the legislative session beginning in May 1935. The Tucker Act, approved on June 27, 1935, sought to end the discrimination against educational appropriations as decided in *Abramson v. Hard* by declaring education to be an essential function of state government. An essential function of state government would be paid first from available revenues. However, appropriations not paid to the schools at the end of the fiscal year would cease to be a debt of the state to the schools. The Tucker Act contained the following provisions:

> Section 1. The maintenance and operation of the public schools, secondary schools, normal schools, and institutions of higher learning in the State of Alabama, is hereby declared to be an essential function of State Government of equal importance with the other essential functions of State Government such as the legislative, executive and judicial departments; and the payment of salaries of the teachers and administrative officers of said schools and institutions is as essential as the payment of the salary of any officer of the State.
>
> Section 2. In the administration of that certain Act known as the Budget and Financial Control Act, approved September 27, 1932, and of any other law of the State of Alabama, no discrimination against in prorating, allotment, or payment of appropriations shall be made against any of said schools or institutions in favor of any other department, board, institution,

> commission, or other State agency, or in favor of any officer or agent of the State of Alabama, whether on a salary fixed by law or not, it being the purpose of this act to establish, in the allotment, proration, and/ or payment of appropriations for the public schools and educational institutions of the State, identity and equality of treatment, and equal priority, with the other essential departments and officers of the State Government (Acts of Alabama, 1935, No. 15 1, p. 193).

However, despite the good intentions of this act, it was declared unconstitutional. In an opinion of the attorney general on December 3, 1935, the inability of the legislature to set aside the construction of the law already applied by the courts to actual cases *(Abramson v. Hard)* was affirmed:

> A reading of this act leads to the inescapable conclusion that it was designed to overrule to the extent there indicated, the decision of the Court in *Abramson v. Hard,* supra. This is not within the power enjoyed by the legislature. . . . The effect of constitutional provisions is not thus dependent upon the will of the legislature.
>
> Act No. 151, approved June 27, 1935, is unconstitutional as violative of Sections 42 and 43 of the Constitution (*Attorney General Reports, October 1, 1935-December 31, 1935,* pp. 281-285).

An attempt to end this discrimination by constitutional amendment followed in 1936 in the Harrison Bill.

The Harrison Bill, 1936. In the wake of the failure of the Tucker Act, the legislature sought to pass a parity amendment to the constitution which would provide funds for education on an equal basis with other state functions. Strong sentiment existed among the citizens for such an

amendment, and several bills proposing it were introduced. The Harrison Bill and the Clay Bill were the two received most favorably in the legislature.

The bill which would come to be known as the Harrison Bill originated in the House of Representatives as House Bill 11 by Kelly. However, Harrison succeeded in substituting his bill for the one by Kelly on the floor of the House. This bill won House approval and was transmitted to the Senate. The following excerpt from House Bill 11 summarizes the key provisions of the bill:

> Section 1. That an amendment to the Constitution of the State of Alabama to be known and designated as Article XXIV is hereby proposed, the proposed amendment being as follows.
>
> Article XXIV. Public education is hereby declared to be an essential and primary function of government in this State. It shall be unlawful for the Comptroller or like officer of the State of Alabama to draw any warrant or other order for the payment of money belonging to or administered by the State of Alabama upon the State Treasurer unless and until it shall have been certified to such comptroller or like officer by such Treasurer that there is then in the hands of such Treasurer money available and appropriated for the full payment of the same. All appropriations now or hereafter made shall be either (a) Absolute, or (b) Conditional.
>
> (a) The following shall be absolute appropriations, shall have preference over conditional appropriations, and to the limit of the money in the hands of the Treasurer available therefor, shall be payable in fun in the order named:
>
> 1. Appropriations for payment of interest or principal or sinking fund on the public debt or on trust funds covered into the State Treasury.

2. Per capita appropriations to eleemosynary and correctional institutions and the care and maintenance of convicts.
3. Appropriations to make effective any constitutional provision setting apart any certain tax, excise, income or charge for a designated use or purpose, not including appropriations to be made from the State's General Fund.

(b) All other appropriations shall be conditional appropriations and shall be payable in full only in the event that after providing for payment of the absolute appropriations there remains in the hands of the Treasurer money available for the full payment of such conditional appropriations; and in the case there is insufficient money available for such full payment, then the money available to the limit of the money in the hands of the Treasurer available thereof, shall be prorated without any discrimination, and each conditional appropriation shall be payable in the proportion which the money available bears to the total of all such conditional appropriations. At the end of each fiscal year all unpaid conditional appropriations which exceed the amount of money in the State Treasury subject to the payment of the same, after such proration, shall thereupon become null and void to the extent of such excess (Journal of the Senate, 1936, pp. 722-723).

House Bill 11 was assigned to the Committee on Finance and Taxation, from which it was reported to the full Senate without amendment. It was here that numerous amendments were placed on the bill to make certain additional appropriations absolute rather than conditional. Among them was the Institute for the Deaf and

Blind, state gasoline taxes for the State Highway Department, and appropriations to the judiciary:

> An extensive number of amendments were attached to the Harrison Bill, and it came to naught in a conference committee late in the evening of the final day of the special session, April 17, 1936. The measure was killed by a small group of lawyers in the Senate, with the aid of Lieutenant Governor Thomas Knight, Jr., who were determined to prevent the proration of judicial salaries under the provisions of the bill. Since the bill had been amended so extensively, it would have increased discrimination against education rather than helping it. For this reason the death of the Harrison Bill was considered fortunate for Alabama schools (Cain, p. 242).

Minimum Program Enacted, 1935

Bibb Graves' promise in his 1926 campaign to provide a minimum seven-month term was partially fulfilled through the increased revenues provided by the ASETF and the Unified Educational Program. However, the intervention of the depression prohibited the fulfillment of the program. During the 1934 campaign, Graves again promised a minimum school term of seven months, requiring both increased funding and a pattern of equalization. While the legislature was receptive in 1935 to establishing such a minimum program, the enabling legislation which followed was not accompanied by a plan for increasing revenue. As has been described, education was already incapable of receiving the appropriations promised because of the Budget and Financial Control Act of 1932. A minimum educational program could not be established in every city and county school system without the needed revenues.

The legislature met again on August 13, 1935, after a recess. On September 2, 1935, the two companion acts which comprised the Minimum Program Acts were passed. The first of these acts, No. 326, was an appropriation bill; the second act, No. 295, established the rules and regulations by which the appropriated funds would be distributed and apportioned. Studies of the 67 county and 45 city school systems had indicated that the state would have to provide an equalized Minimum Program Fund of at least $6 million in addition to the Public School Fund to achieve a minimum school term of seven months. Unfortunately, the calculations were based on outdated depression-era information. The attendance data were for 1933-34, and no provision was made for growth in attendance or for adjusting teachers' salaries in proportion to training. So in spite of the good intent of the legislature of 1935, there was no assurance that the funds appropriated would be sufficient (*Annual Report*, 1935-37, Part 1. pp. 20-21).

The seven-month school term was agreed upon as the minimum program school term for several reasons. First, it had been the goal in 1927 and not reached by 1935. Second, the high schools of Alabama traditionally operated for nine months when funds were available. Many felt that the elementary schools, which traditionally operated when funds were available for seven months, should operate for nine months also. Nevertheless, the legislature could see no way to support high schools for a nine-month term and to lengthen the seven-month elementary school term to nine months. Therefore, the compromise was a minimum term of seven months for both (*Annual Report*, 1935-37, Part 1, p. 22).

Appropriation Act of the Minimum Program, 1935. Act Number 326, which provided the financial basis for the Minimum Program, had numerous shortcomings:

1. The total Minimum Program Fund appropriation of $6,042,516 was inadequate the day it was appropriated because it was calculated from 1934-35 data.
2. The additional appropriation of $3,160,516 was a conditional appropriation if money was available in the General Fund and by Section 6 subject to the Budget and Financial Control Act of 1932.
3. The additional appropriation of $500,000 to the Public School Fund was also subject to the Budget and Financial Control Act. Only the funds earmarked by the constitution could be guaranteed revenue for the schools.
4. The appropriations previously made in a separate category to equalize educational opportunity in the Unified Educational Program of 1927 were combined into one appropriation in the Minimum Program Fund.
5. The appropriations to the Minimum Program Fund, the Revolving Fund, and the State Secondary Agricultural School Fund were to be made from the ASETF when available. Of these appropriations, the only guaranteed revenues were those from taxes earmarked to the ASETF and not subject to the Budget and Financial Control Act.
6. The Minimum Program Fund is incorrectly called a fund since it has no revenue of its own, only those of the ASETF, the Public School Fund, and the General Fund (when available), and the Public School Fund.

Due to the financial constraints of inadequate appropriations and limited allotments under the Budget and Financial Control Act, the Minimum Program had no chance of being fully implemented as called for in its companion bill, No. 295. As long as the total revenues of the state were inadequate to fully fund the essential functions of state government first, there was no chance that the Minimum Program Fund could receive its full appropriation. And with the depression still being felt in Ala-

bama, there was no economic recovery in sight that would provide enough revenues through the taxes levied by the state government to fully fund appropriations. The only alternative open for providing equity to education was through additional earmarking of funds until sufficient revenues were generated to equal the total appropriations made by the legislature. Only the Previously earmarked revenues from the Constitution of 1901 and the ASETF of 1927 had saved the schools from complete financial collapse during the depression. Earmarking became the only solution because both statutory and constitutional attempts at parity had failed.

Apportionment Act of the Minimum Program, 1935. The apportionment of the appropriations to the Minimum Program Fund was to be done so as to promote equalization of educational opportunity. The promotion of equalization was a very difficult matter in Alabama in 1935 because of the wide variety of local conditions which existed:

1. The assessed valuation of property per child enrolled varied from $546 in the poorest county to $2,651 in the wealthiest county.
2. The percentage of Negro children enrolled to the total enrollment of negroes and whites varied from 0.2 of I per cent in one county to 87 per cent in another county.
3. The density of white children per square mile varied from 0.8 of a student in the most sparsely settled county to 18 in the most densely populated county.
4. Transportation and consolidation were almost completely developed in some counties while little had been accomplished in a few counties.

5. The percentage of college graduates among white teachers varied from 10 per cent in one county to 60 per cent in another county.
6. The existing state appropriations were inadequate and even these were not paid (*Annual Report*, 1935-37, Part I, pp. 18-19).

It was the purpose of the apportionment act to take these factors into consideration and promote equalization, notwithstanding the reality of item number 6 above (nonessentiality and proration).

In planning the apportionment act, the legislature kept the following principles uppermost in mind:

1. The educational welfare of a child in one section of the State is as important as the educational welfare of a child living in any other section of the State.
2. The burden which must be home in support of education should be equalized.
3. Every school unit in the State should be required to make a uniform tax effort in order to provide the minimum state term. If after taxing itself to the uniform level, a school unit still lacks sufficient funds to provide the minimum term, the remainder of the cost should be paid from the State Treasury.
4. No school system in the State should be tom down in order to build up any other system. In other words, the State should level upward, never downward.
5. Local units should be stimulated to exceed the state program whenever possible.
6. Legitimate educational needs should be scientifically calculated in order to provide for flexibility in educational programs. Furthermore, the state program of school support should be a "balanced program" in terms of providing funds for all necessary functions of educational expenditures.

7. Provisions should be made for growth in educational load.
8. Sound business procedures should be followed in administration of every school unit in the State in order that the children might get the maximum benefit per educational dollar expended, and
9. State funds should be apportioned in such a manner as to encourage the administrative efficiency of local boards of education and to discourage inefficiency (*2Annual Reports*, 1935-37, p. 20).

The apportionment act as entitled contained the following provisions:

Section 1 established the Minimum Program Fund to include all appropriations made by the legislature to the credit of the fund and any other funds set aside for that purpose, including the Equalization Fund established in 1927.

Section 2 stated two purposes of the act; one, that the fund would be used to "aid in providing at least a seven months' minimum term for all schools;" and two, that it was to "assist in the promotion of equalization of educational opportunity for all children in the public elementary and high schools." These provisions are present in Appendices 5-5 State Board of Education Regulations for the Annual Apportionment of the Minimum Program Fund for the Fiscal Year Beginning October 1, 1987, and Appendix 5-6, Statutory Provisions for the Apportionment of Education Funds to Independent Cities.

Additional Educational Legislation, 1935

The Minimum Program Acts were adopted by the Legislature without a dissenting vote. G.S. Smith, president of the Alabama Education Association, praised Governor Graves and the legislature for their efforts. He asserted

that the "passage of the Minimum Program Act of 1935 marked the greatest single step yet taken to insure equitable distribution of public funds for education" (*Alabama School Journal*, Vol LIV, May 1937, p. 19).

The School Budget Act, 1935. An additional act, the School Budget Act, was also passed on September 2, 1935, to extend the budgetary procedures imposed on state government by the Budget and Financial Control Act of 1932 to the operation of local school systems. It provided that each of the 67 county boards of education and the 45 city boards of education could not spend more for current expenses in any year than its revenue receipts for that year plus balances on hand. This guaranteed that every school board would live within its income (Acts 1935, No. 300, p. 728).

The School Warrant Act, 1935. The School Warrant Act, also passed on September 2, 1935, enabled local boards of education to clear up their floating debts by repealing all old school warrant laws and placing restrictions on refunding warrants. Authority was granted to refund any warrant at interest rates over four and one-half percent (Acts 1935, No. 302, p. 735).

The School Textbook Act, 1935. The School Textbook Act was approved earlier on July 17, 1935, to provide for state-owned textbooks for the first, second, and third grades. An initial appropriation was provided in the amount of $175,000 from any funds in the treasury not otherwise appropriated under the direction of the governor. The revenues to accomplish this were to come from a levy on tobacco products (Acts 1935, No. 201, p. 594).

Emergency Salary Appropriations, 1935. A special salary appropriation to provide funds to pay public elementary and high school teachers for the remainder of the normal 1934-35 school term was also enacted by the legislature. For those county and city school systems below 5,000 in population, and the state secondary agricultural schools, where all local, state, and federal funds available had been exhausted for salaries, the sum of $500,000 was appropriated from the state treasury to the State Board of Education. An additional stipulation was that no teacher would receive more than $60 per month for a maximum of a seven-month elementary school term or a nine-month high school term (Acts 1935, No. 212, p. 600).

The Sales Tax Enacted, 1936

The financial troubles of public education in Alabama were not over. Appropriation and apportionment plans meant nothing without adequate revenues.

The School Crisis and Proration of 1935-37.

> In spite of the increased school appropriation and other constructive school laws enacted in 1935 which had wide-spread influence, revenue receipts were insufficient to pay the appropriations. This led to proration and a school crisis which required additional legislation. The needed legislation was not passed until a second special session of the legislature was called, at which time the necessary measures were taken, and the schools returned to normal (Cain, p. 233).

School funds were again prorated during the 1935-36 and 1936-37 school years. The attempts of the Tucker Act and the Harrison Amendment to provide parity for education had failed, and Alabama remained in the grips of

the worst economic depression to strike this nation. As the school system of the state had relied on constitutional ad valorem taxation for about two-thirds of its revenue, the decrease in state property assessments by about $300 million between 1930 and 1935 sharply curtailed these funds. Assessments continued to decline during the 1935 quadrennium. Enrollment in elementary and high schools and in higher education continued to grow, further straining resources. The School Budget Act of 1935 restricted the borrowing power of local school boards. Federal relief funds which had assisted during the 1931-35 quadrennium were no longer available, and the continued discrimination under the Budget and Financial Control Act created a worsening crisis (*Annual Report*, 1936, p. 16).

The Special Legislative Session of February 11, 1936. Governor Graves called the legislature of 1935 into special session on February 11, 1936, for the purpose of relieving the financial crisis in education:

> I believe that we face an early collapse of our school and health programs unless effective financial relief is promptly provided. To provide this relief is the great purpose of this session (Graves, February 11, 1936, p. 111).

Graves reported that of the nearly $4 million appropriated by the legislature to the common schools, only 26.43 percent could be paid under the existing financial conditions:

> These schools can't run the balance of this year without the payment of the balance of these appropriations, and I pray God that you and I will not let them stop and thereby let an annual crop of Alabama children go to waste (Graves, February 11, 1936, pp. VI-VIII).

This necessity put Governor Graves in conflict with the understood message of his 1934 campaign, that he would oppose any new taxation. Now, he repeated his platform:

> The Income Tax is in our Constitution and laws by the will of the people. I will enforce it and oppose its repeal. I will oppose the Sales Tax.
>
> Experience and familiarity with our State's business on the one hand, and knowledge of the financial condition of our people on the other hand, are the efficient instruments whereby, when I am Governor, I will be able to balance the budget, pay the State's debts, run our schools, and operate an efficient Government by economy without further taxation.
>
> Should conditions make this impossible, I still promise to "PAY THE DEBTS, RUN THE SCHOOLS AND PROVIDE AN EFFICIENT GOVERNMENT' and to do so with the least possible burden on our people (Graves, February 11, 1936, Extra Session, p. VIII).

The governor called attention to this last plank in his platform and noted that it would be impossible to operate the schools without further taxation in their behalf.

Governor Graves proposed two tax changes: exemption of homesteads from the 6.5-mill state tax and other ad valorem taxes, and a luxury tax to fund education and replace revenues lost through the exemption. Graves continued his rejection of the general sales tax, believing it unfair because it taxed the necessities of life such as bread, shoes, and nails. He asked, instead, for a luxury tax on everything that is not a necessity. In addition, he suggested that the legislature increase the franchise tax on foreign corporations and consider taxes on natural gas, export power, and amusements of all kinds (Graves, February 11, 1936, Extra Session, p. IX).

This tax measure was soundly defeated in the legislature. The session ended after 25 legislative days, with Graves taking the blame:

> The people are thumbs down on a spending spree-they want thoughtful and conservative spending putting money where it will do the most good at the least outlay.
>
> Governor Graves should learn a lesson from "back home" that there is a limit to the patience and endurance of the people staggering under debt and the aftermath of depression (*Montgomery Weekly*, 1936).

The Special Legislative Session of November 23, 1936. Graves learned well from his defeat in the first extra session and immediately began planning for the second extra session. On November 23, 1936, he presented a second plan to the legislature:

1. To revise the Revenue Laws and to provide additional revenue for the schools and to enable the State, County and City governments to function adequately.
2. To provide for the payment of all educational activities, experimental and extension services, out of the Alabama Special Educational Trust Fund and to relieve the General Fund of all such payments.
3. To provide for an appropriation from the General Fund to take care of any deficit in the Alabama Special Educational Trust Fund.
4. To provide for the exemption from State ad valorem taxes of homesteads, as defined by the Constitution and Laws of the State of Alabama.
5. To set up a "Property Tax Relief Fund" and reduce State ad valorem taxes.

6. To regulate the manufacture and sale of spiritous, vinous or malt beverages through State owned and operated stores of other State supervision, and to provide a referendum thereon to the electors of Alabama (Graves, November 23, 1936, Second Extra Session, p. 11).

Graves also presented to the legislature the Zukoski Report, a study of school finance which had been prepared by a group of Birmingham businessmen headed by Charles F. Zukoski, Trust Officer and Vice President of the First National Bank of Birmingham. This group had come to Montgomery at the request of Senator Hays Tucker of Tuscaloosa and anti-administration legislators to study funding for public education. After spending three weeks in the State Department of Education, the group acknowledged the crisis in educational finance and confirmed that conditions were being accurately presented to the legislature and to the public. The report recommended an additional 3.0 mill tax to be included as a part of the Minimum Program (Graves, November 23, 1936, p. VIII).

Governor Graves recommended the enactment of an excise tax to be known as a privilege licensing tax on retail merchandising of personal property; the measure of the tax was to be one and one-half percent of the gross receipts of the merchandising business, including amusements run for pay. He projected that this tax would yield some $4.5 million the first year in new revenues. He urged that the returns from this license tax be placed in the ASETF to replace the amount that it takes to exempt homesteads from the 6.5-mill state tax. He asked that every educational and extension program from the General Fund be transferred to the ASETF and that an additional one million dollars be transferred from the General Fund to the ASETF. He also called for a bill establishing the Property Tax Relief Fund with the surplus in the ASETF to be transferred to it at the end of each year to further reduce the ad valorem tax (Graves, November 23, 1936, pp. XX-XXI).

Gross Receipts Tax Act, 1936. The legislature responded favorably to Governor Graves' proposals and approved the Gross Receipts Act on December 17, 1936:

> Section 1. Every person, firm, corporation, association, or co-partnership opening, establishing, operating, or maintaining one or more retail stores or retail mercantile establishments within the State, whether under one general management or not, shall, in addition to all other licenses or taxes of whatever kind now levied by law, pay to the State of Alabama, as a license or privilege tax for the privilege of doing such business, an amount equal to one and one-half per cent (1-½%) on the gross sales of said business.
>
> Section 3. . . . .Upon every person, firm, corporation, association, or co-partnership engaged or continuing within this State in the business of conducting places of amusement or entertainment, billiard and pool rooms, bowling alleys, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling and prize fights, boxing exhibitions, football and baseball games, skating rinks, race tracks, or any other place at which entertainment is offered to the public, including public bathing places, public dance halls of every kind and description within the State of Alabama, a license tax in addition to all other taxes now or hereafter levied, in an amount equal to one and one-half per cent (1-½%,) of the gross receipts of such business or places of amusement.

Section 6. That the monies derived from the license tax levied. . . .hereinabove set forth shall be covered into the State Treasury and become a part of the Alabama Special Educational Trust Fund; provided, however, that so much thereof as may be necessary, shall be charged with the replacement in the General Fund of the three-mill Constitutional levy for school the one-mill levy for Soldiers' Relief and the two and one-half mills for general purposes lost by the exemption of homesteads in the amount of Two Thousand Dollars ($2,000.00), and the Comptroller, with the approval of the Governor, is hereby directed to draw his warrants payable out of the Alabama Educational Trust Fund as herein provided in such sum as shall be found necessary to take care of and replace the three-mill Constitutional school levy, the one-mill Soldiers' Relief levy and the two and one-half mill levy for general purposes of the State ad valorem tax lost as above set forth (Acts of Alabama, 1936-37, No.1, p. 1).

This tax on gross receipts went into effect on January 1, 1937, for two months until its repeal and replacement with a substitute selective sales tax.

Property Tax Relief Fund and Homestead Exemption Acts, 1937. This provided relief for homesteads in Section 6. An act approved February 20, 1937, further defined homesteads and provided exemption:

> Section 1. The word "homestead" as herein used is the "homestead" as now defined by the Constitution and Laws of the State of Alabama.
>
> Section 2. Homesteads, as herein defined, are hereby exempted from all State ad valorem taxes beginning October 1, 1937.

> Section 3. In no case shall the exemption herein made apply to more than one person, head of the family, nor shall said exemption exceed Two Thousand Dollars ($2,000.00) in assessed value, nor one hundred sixty (160) acres in area (Acts of Alabama, 1936-37, No. 107, p. 113).

An accompanying act approved February 23, 1937, set up in the state treasury a Property Tax Relief Fund and provided for its distribution:

> Section 1. That there is hereby set up in the State Treasury a Property Tax Relief Fund to be used to reimburse the State General Fund, the State Soldiers' Relief Fund and the Public School Fund by such amounts as are lost to such funds by reason of exemption of homesteads, in whole or in part, from the payment of the State levy of twenty-five cents ($.25) on each One Hundred Dollars ($100.00) of taxable property for the State General Fund; ten cents ($.10) on each One Hundred Dollars ($100.00) of taxable property for the State Soldiers' Relief Fund and thirty cents ($.30) on each One Hundred Dollars ($100.00) of taxable property for the Public School Fund.
>
> Section 2. That the surplus over and above Seven Hundred and Fifty Thousand Dollars ($750,000.00) in the State General Fund, after all State appropriations now or hereafter payable from the State General Fund are paid in full on September 30th of each fiscal year beginning September 30, 1937, shall be transferred from the State General Fund into and become a part of the Property Tax Relief Fund.
>
> Section 3. Any surplus in the Special Educational Trust Fund on September 30th of each fiscal year, beginning September 30, 1937, remaining after all appropriation now or hereaf-

ter payable from the Special Educational Trust Fund have been paid in full, shall be transferred into and become a part of the Property Tax Relief Fund.

Section 6. Should any surplus remain in the Property Tax Relief Fund after the charges hereinabove set out have been paid off or discharged in accordance with the provisions of this Act, then the Governor is directed, by proclamation, to reduce pro rata the State levy on all State ad valorem tax assessments, and the Tax Collectors and Tax Assessors are authorized and required to enter such reduction pro rata in the assessment and collection of all State ad valorem taxes (Acts of Alabama, 1937, No. 127, p. 142).

The Luxury Tax Act or General Sales Tax, 1937. The Gross Receipts Tax Act had been in effect less than two months when it was repealed and replaced with what was called the luxury tax or the general sales tax, effective March 1, 1937. This sales tax was termed a "luxury tax" because it provided numerous exemptions for commodities, particularly some of the essential foodstuffs. The major provisions follow:

Section 2. There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts as the case may be, as follows: (a) Upon every person, firm or corporation engaged or continuing within this State in business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character, (not including, however,

bonds or other evidences of debt or stocks) an amount equal to two per cent of the gross proceeds of sales of the business, except where a different amount is expressly provided herein. . . . .Upon every person, firm, or corporation engaged or continuing within this State in the business of selling any automotive vehicle, an amount equal to one-half of one per cent of the gross proceeds of the sale of said automotive vehicle. (c) Upon every person, firm or corporation engaged or continuing within this State in the business of conducting places of amusement. . . .an amount equal to two per cent of the gross receipts of any such business. (d) A situs is hereby declared to exist for the purpose of this Act and there is hereby levied a tax of two per cent on the fair market value of goods, wares and merchandise, motor vehicles, radio receiving sets, phonograph mechanisms, and all articles of trade imported or brought into this State by any consumer on which the tax herein levied has not been paid; provided, said goods, wares, and merchandise have terminated their movement into the State of Alabama . . . . (e) A license tax is hereby levied upon all salesmen and solicitors whose stock of goods, wares and merchandise are located without the State of Alabama and on which the tax herein levied is not paid before delivery to the consumer of the fair market value of the goods . . . . the price charged to the consumer or user for the goods, wares and merchandise shall be prima facie evidence of their fair market value (Acts of Alabama, 1936-37, No. 126, p. 125).

General merchandise was thus taxed at two percent of its selling price and motor vehicles were taxed at one-half of one percent of the net sales price. Certain exemptions, however, were provided:

Section 4. Exemptions. There are, however, exempted from the provisions of this Act: (a) Insurance companies upon which the statutes of the State of Alabama levy a tax based upon premiums. (b) Building and Loan Associations, State and National Banks, not having a capital stock represented by shares and which are operated exclusively for the benefit of their depositors. (c) Amounts received from the sale or sales of livestock, poultry and other products of the farm, dairy, grove or garden, when said sale or sales are made by the producer or members of his immediate family, or employees forming a part of the producer's organization, in the original state or condition or preparation for sale; also amounts received from the gross proceeds from the sale of cotton in bales, whether compressed or not, unprocessed cottonseed, peanuts in lots of not less than a ton, and hay in lots of a ton or more, whether such sales be made by the original producer of not, and the amount received from the sale or sales of fertilizer, seeds for planting purposes, boxes, crates, paper or cloth bags for use in preparing agricultural products for market; provided that nothing contained herein shall be construed as exempting amounts received from the sale of nursery stock or floral products. (d) Amounts received under life, sick, accident, health, fire, public liability, and property damage insurance policies. (e) Amounts received under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract. (f) Amounts received from the sale of used automotive vehicles, which vehicles are commonly known to the trade as secondhand automotive vehicles. (g) Amounts received from the sale of textbooks used in elementary schools, high schools, and institutions

of higher learning. (h) Amounts received by hospitals, infirmaries, and/or sanitariums. (i) Provided, however, that the Provisions of Section 2 of this Act shall not apply to (1) amounts received from the sale of newspapers and agricultural or religious publications and magazines or to the sale of advertising space in said newspapers or publications, or the sale of time or the facilities of any radio broadcasting station, or to those engaged in making said sales or to indoor or outdoor advertising; (2) amounts received from the sale of gasoline, lubricating oils, other wise taxed, or from the sale of cigars, cigarettes and tobacco products otherwise taxed, or from the sale of alcoholic and/or cereal beverages upon the sale of which a tax is now or may hereafter be levied and collected as provided by law; (3) provided, however, that for the purpose of determining the amount of the license or privilege tax due by any person, firm or corporation under the provision of this act there shall be deducted from the gross sales or gross receipts of such person, firm or corporation, amounts received from the business on which or for engaging in which a license of privilege tax is levied. . . (4) Provided further that for the purpose of determining the amount of any license or any privilege tax due by any person, firm or corporation, under the provisions of this act, there shall be deducted from the gross sales or gross receipts of such person, firm or corporation the amount received from the sale of transportation, gas, water or electricity. 6) Amounts received from the sale of sweetmilk, butter-milk, corn meal, flour, dry salt sides, salt fat backs, plates, bellies, sugar and coffee, and the amounts received from the sale of lunches to school children in school buildings within the State when sold by any person or association

or group not for profit. (k) Amounts received by manufacturers, compounders, processors, producers, miners, and quarriers from sales to consumers in carload lots or in larger quantities except as otherwise expressly provided in Section I of this Act. (1) Amounts received by any person, firm or corporation from the construction, repair, towage or pilotage of vessels or barges (Acts of Alabama, 1936-37, No. 126, p. 127).

The proceeds from this new sales tax measure were again earmarked for the ASETF and the Property Tax Relief Fund with some additional beneficiaries identified:

Section 21. Before divisions and distribution, the expenses of the administration of this Act and also so much thereof as may be necessary for the replacement in the Public School Fund of the three-mill constitutional levy for schools and in the General Fund of the one-mill levy for Soldiers' Relief and the two and one-half mills for general purposes lost by any exemption of homestead provided by legislation enacted during Special Session 1936-37 of the Legislature of Alabama shall be first charges against the proceeds of said license, taxes or receipts levied or controlled under this Act. The Comptroller, with the approval of the Governor, is hereby directed to draw his warrants payable out of the total proceeds of said licenses, taxes or receipts levied or collected under this act as herein provided in such sum as shall be found necessary to take care of and replace the three-mill constitutional school levy, the one-mill Soldiers' Relief levy and the two and one-half mill levy for general purposes of the State ad valorem taxes lost as above set forth. Three-fourths of the net proceeds collected or received under the provisions

of this Act shall be covered into the State Treasury and become a part of the Alabama Special Educational Trust Fund. One-fourth of the net proceeds collected or received under the provisions of this Act shall be paid into the State Treasury to the credit of the sixty-seven counties of the State and shall be divided and distributed as follows to-wit: One-half of said proceeds shall be divided and distributed proportionately among the sixty-seven counties of the State according to the population of the said counties as shown by the last Federal Census; and one-half of said proceeds shall be divided or distributed equally among the sixty-seven counties; provided that the funds divided shall be used exclusively for full-time health services in cooperation with the State Board of Health and/or the Federal Government; for public welfare in cooperation with the State Department of Public Welfare and/ or the Federal Government; and for extension services in cooperation with the Alabama Agricultural Extension Service and/or the Federal Government; and for extension services in cooperation with the Alabama Agricultural Extension Service and/or the Federal Government, at the discretion of the Commissioners Court, Boards of Revenue, or other governing bodies of the several counties of the State (Acts of Alabama, 1936-37, No. 126, p. 125).

End of Proration, 1937

In 1936-37, for the first time in five years, one hundred percent of the appropriations due to education were paid, largely because of the consequence of earmarking a major portion of the proceeds of the sales tax for public education. State Superintendent J.A. Keller commented on this event:

I am aware of the fact that the practice of earmarking revenue is opposed by many political science experts. But in view of the rulings of our Supreme Court, which protect earmarked funds but give education last place in the State General Fund, we have no alternative (*Annual Report*, 1935-37, Part 1, p. 24).

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Summary

The Alabama Special Educational Trust Fund has served to insulate public education from two types of financial failures in Alabama. The first is that since access to the local property tax — the usual source of local school funds nationwide — is so constrained by constitutional provisions, the only substantial source of funds is those from the state. In the case of the ASETF, the two growth taxes of the state — the income tax and the sales tax — are earmarked for "educational purposes only." Therefore, the only consistent and elastic source of revenues in the entire state has been provided for public schools.

The second is that since public education is an nonessential function of state government, only the earmarking of funds through a separate fund — the ASETF — has buffered public K-12 schools from the uncertainties surrounding proration of the General Fund. Simply put, the public schools of this state could not have achieved the present successful status, although inadequate, without protection from discriminatory proration. A constitutional guarantee of public education is lacking in Alabama. The existence of the ASETF does provide the appearance of such a constitutional guarantee.

The ASETF and public has naturally come to dominate the activities of the legislature for several reasons. First, because the ASETF has usured the two major tax resources of the state, it represents both the largest continuing and growth revenues of the state. This results in the continual threat of diversion for other purposes. Secondly, no function of state government requires the magnitude of expenditure as does public education. The casting of this expenditure promotes extensive discussion and deliberation as existing and new programs by the various consumers of the ASETF compete for attention. Thirdly, no program of state government has such an impact on so many lives as does public education. The political reality of this impact is expressed through the annual appropriation from the ASETF.

It is for these and other reasons that each session of the legislature tends to devote itself in substantial part to the ASETF and the appropriations therefrom for public education. Tracing the ASETF through these sessions reflects in many ways the politics, policies, and aspirations of Alabama since 1927. Our public policy toward public education has been set in these appropriations. There is no reason to expect any difference in the future.